

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3520 OF 2004

JUDGMENT:

Questioning the order dated 14.05.2004 in W.C. No.226 of 2003 NF, passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, whereby and whereunder, a sum of Rs.96,768/- was awarded towards compensation for the injuries sustained by the appellant - applicant viz., Golla Papaiah, he preferred the present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923, on three main grounds.

2. The first ground is that income of the applicant was taken far less than what was spoken to him as Rs.4,000/- per month by working as a cleaner under opposite party No.1, owner of the lorry bearing No.APJ - 7448, and sustained injuries during the course of employment; second, the percentage of disability spoken to by PW.2, the doctor viz., T. Narsing Rao, was to the extent of 70%, but only 40% was taken by the authority; third, interest was not at all granted from the date of accident.

3. Heard Sri K. Sarala Mahender Reddy, learned counsel for the appellant - applicant, and Sri P. Rajesh Babu, learned counsel for respondent No.2 - insurer.

4. Against respondent No.1, employer-cum-owner of the lorry on which the applicant was working as a cleaner, the appeal was dismissed for default on 15.12.2015. However, since respondent No.1 being the employer - cum - owner of the lorry and already suffered decree passed by the authority, its absence is immaterial and dismissal of the appeal against it, will not affect adjudication of the controversy in the present appeal.

5. The applicant, while working as cleaner on the lorry bearing No.APJ - 7448 of opposite party No.1, who is respondent No.1 herein, met with an accident on the intervening night of 21/22.12.2001 at about 12.00 hours midnight when the driver of the lorry moved the lorry in a rash and negligent manner, in his attempt to park the same, and hit the Godown of one Pentaiah, on account of which, he (applicant - cleaner) fell down from the lorry and sustained fracture of shaft femur, which according to the medical officer - PW.2, is mal-united, who assessed the disability at 65% and loss of earning capacity at 70% and issued Exs.A-3 and A-4, which are wound certificate and disability certificate, respectively.

6. The learned authority, somehow, noticing that the percentage of disability assessed by the doctor - PW.2 suffers from abnormality on account of the fact that he (PW.2) has spoken the same as 50% in his cross-examination, assessed the loss of earning capacity at 40% for the purpose of compensation, monthly earnings at Rs.1,800/- and worked out the loss of earning capacity by applying

the formula (60% of the wages, relevant age factor '224.00', and loss of earning capacity at 40%), which worked out to Rs.96,768/- (Rs.1,800/- x 60/100 x 224 x 40/100). Admittedly, no interest was awarded.

7. The authority has reduced the loss of earning capacity of the applicant to 40%, from 70% spoken to by the medical officer in his chief-examination, but, 50%, appearing in his (PW.2) cross-examination, ought to have taken by the authority, rather than 40%. So far as monthly wages are concerned, the authority correctly assessed them as Rs.1,800/- in the absence of proof of earnings or the wages as asserted by the applicant at Rs.4,000/-. Thus, the loss of earning capacity works out to Rs.1,20,960/- (Rs.1,800/- x 60/100 x 224 x 50/100 = Rs.1,20,960/-).

8. So far as interest is concerned, the learned Commissioner has not granted the same. The applicant is entitled to interest at 12% per annum from the date of taking place of the accident till realisation on the entire compensation in view of the ruling of the Hon'ble Supreme Court in **The Oriental Insurance Company v. Siby George**¹. It would be better to refer to paragraph No.9 which is thus:

“9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of

¹ (2014) 2 SCC 298

compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in *Kerala State Electricity Board vs. Valsala K.*, AIR 1999 SC 3502 answered the question in the negative holding, on the authority of *Pratap Narain Singh Deo*, that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

“1. The neat question involved in these special leave petitions is whether the amendment of Sections 4 and 4A of the Workmen’s Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen’s Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.”

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation and also awarding interest while maintaining the award in all other aspects. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

August 17, 2017.
PV

A. SHANKAR NARAYANA, J

