

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL MISCELLANEOUS APPEAL No.665 OF 2009

JUDGMENT:

This appeal is filed against the order dated 11.05.2007 passed in W.C.C.No.32 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II, Guntur.

The case of the applicant/appellant is that he is a driver of the car bearing No.AP37U 6669. He further averred that Opposite Party No.1 is the owner and Opposite Party No.2 is the insurer. He also averred that on 01.02.2004 during the course of employment, he met with an accident. Hence, he filed W.C. claiming compensation of Rs.2,00,000/- along with interest. Opposite Parties denied the contentions and the claim. The matter went to trial. On behalf of the applicant, A.Ws.1 and 2 were examined and Exs.A1 to A.4 were marked. On behalf of the Insurance Company, no evidence was adduced. After considering the oral and documentary evidence, the Commissioner dismissed the application. It is this order that is now impugned in the present appeal.

Heard Sri G.V.S.Mehar Kumar, learned counsel for the appellant, Sri K.Ramesh Babu, learned counsel for respondent No.1 and Smt.I.Maamu Vani, learned counsel for respondent No.2.

The essential argument in the appeal was on the fact that the lower Court dismissed the application on the ground that there

is no employer employee relationship between opposite party No.1 and the applicant.

Learned counsel for the appellant pointed out the contents of the FIR which showed that a friend of Opposite Party No.1 took the vehicle bearing No.AP37U 6669 on a trip for the marriage alliance of her son. It is mentioned in the FIR given to the police by the complainant that the appellant V.Nageswararao was the driver of the said car. He argues that despite this clear contemporaneous statement the lower Court held that there is no employer employee relationship between Opposite Party No.1 and the driver. This Court notices that the reason furnished by the lower Court to deny the employer employee relationship is not correct. There is no prohibition in law for a person to take a friend's car and to go on a trip using the vehicles driver. The accident occurred because the applicant was driving the car belonging to his employer only. Therefore, even if the car was proceeding on a private trip, it cannot be denied that the presence of the applicant at the spot of the accident was only because of his employment with Opposite Party No.1. The contemporaneous document, namely, FIR clearly discloses that the driver of the said vehicle was the appellant himself. Therefore, this Court holds that the finding of the lower Court that there is no employer employee relationship is not correct. This Court holds that the appellant was the driver of the car in question and the injury occurred in the course of employment.

The next question that arises for consideration is: whether the appellant has proved that there is a disability and

consequential loss of earning capacity because of the said disability. To prove this, the evidence of A.W.2 is important. A.W.2 is an Orthopedic Surgeon, who has examined the appellant. His evidence is very clear. According to him, the percentage of disability is less than 5%. The case record is marked as Ex.X1. The doctor in his chief-examination itself said that the disability is less than 5%. In the cross-examination, the doctor deposed as follows: "He never appeared after discharge for treatment. He was in a fit condition at the time of discharge. He can work as a driver." From the evidence of A.W.2, it is clear that the appellant did not suffer any disability which would entitle him to compensation. A claim under the Workmen's Compensation Act rests on the concept of the disability and the consequential loss of earning capacity arising out of that disability. The schedules in the Act fix the percentage of loss of earning capacity in case of injuries and for assessment based on the schedule for non-schedule injuries. Therefore, in the absence of any evidence to show that the appellant sustained a loss in his earning capacity, this Court particularly under the provisions of Workmen's Compensation Act, cannot award any compensation to the appellant.

For the reasons mentioned above, the order of the lower Court is set aside holding that the appellant was a driver and the injury arose in the course of employment. However, on the question of compensation, this Court holds that the appellant is not entitled to any amount towards compensation in view of the clear and categorical evidence of the doctor in question.

With the above observation, the appeal is disposed of. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date : 26.02.2018
ssp

