

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.1046 of 2008

JUDGMENT:

The New India Assurance Company Limited, aggrieved by the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I in W.C.No.149 of 2004 dated 17.03.2006 awarding compensation of Rs.2,20,844/-, jointly and severally against the appellant and the 2nd respondent herein (owner of the vehicle), preferred this appeal contending that the award of the Commissioner directing the appellant and the 2nd respondent herein jointly and severally liable to pay the compensation is erroneous particularly in view of Ex.D.2, which shows that the applicant-1st respondent herein sustained injuries as a result of falling down from the Canter bearing registration No.AP 15T 3502 belonged to 2nd respondent.

2. Heard the learned counsel for the appellant. Though sufficient opportunity is given, none appears for the respondents. Perused the material available on record.

3. Now the point that arises for consideration is:-

‘whether the Commissioner is right in not considering Ex.D.2-accident register while passing the award and whether the compensation awarded is just and proper?’

4. The case of the applicant-1st respondent is that he was employed as a driver on a Canter bearing registration No.AP 15T 3502 by its owner, 2nd respondent herein. While on duty, on 14.06.2004 at about 13.30 hours, when he had stopped the said

Canter on the left side of the road, a cargo van bearing registration No.AP 15U 2565, came in a rash and negligent manner and hit him. As a result, he sustained grievous injuries and was shifted to Gandhi hospital for treatment. His last drawn monthly wage was Rs.3,500/- and his age was 31 years at the time of the accident. He was admitted in Gandhi Hospital for treatment on 15.06.2004 and was discharged on 07.07.2004. He sustained fracture of shaft femer and other injuries all over the body.

5. To substantiate the claim, the applicant-1st respondent himself examined as A.W.1 apart from examining the doctor as A.W.2 and marked Exs.A.1 to A.8. On behalf of the appellant-insurance company, R.W.1 was examined and Exs.D.1 and D.2 were marked.

6. The clinching evidence of A.W.1 is that he was working as a driver of Canter bearing registration No.AP 15T 3502 belonged to 2nd respondent herein. On 14.06.2004 while on duty, he stopped the said Canter on the left side of the road and in the meanwhile, a cargo van bearing registration No.AP 15U 2565 came in a rash and negligent manner and dashed against him, as a result of which, he sustained grievous injuries. He denied the suggestion that he never worked under the 2nd respondent herein. Immediately, after the accident, he was admitted in Gandhi Hospital, Hyderabad and underwent treatment from 15.06.2004 to 07.07.2004. Ex.A.1 is the copy of F.I.R. and Ex.A.2 is the discharge card issued by the Gandhi Hospital.

7. Per contra, the evidence of R.W.1, Assistant Administrative Officer of the appellant is that A.W.1 was admitted in Gandhi

Hospital on 15.06.2004 for medical treatment of the injuries sustained by him when he fell down on the ground from a height, but not as a result of accident. If really, the investigator appointed by the appellant, during the investigation, came to know that A.W.1 fell down from height and sustained injuries, he should have been examined or at least his report should have been filed to rebut the evidence of A.W.1 and Ex.A.2. Ex.A.2 further goes to show that A.W.1 was admitted in the hospital on 15.06.2004 and undergone surgery on 28.06.2004 and was discharged on 07.07.2004. In Ex.A.2 it is clearly noted that A.W.1 sustained shaft of femur and fracture of pelvis.

8. The evidence of doctor/A.W.2 and Ex.A.2/the discharge card issued by the Gandhi Hospital goes to suggest that in the accident, A.W.1 sustained fracture of shaft of femur and fracture pelvis and that the femur was operated and steel rod was inserted in it. A.W.2/doctor further found that A.W.1 developed stiffness in right knee joint and was limping. A.W.2 examined A.W.1 on 22.01.2005 and after examining Ex.A.5/X-Ray report, he found that A.W.1 developed stiffness in right knee joint and was limping and as a result, he estimated the physical disability suffered by the applicant/A.W.1 at 25% of Kessler's Guide and issued Ex.A.4/disability certificate.

9. With regard to the injuries sustained, A.W.2 was cross-examined wherein he admitted that he could not say definitely that the injuries were as a result of any accident only, but however, admitted that the said injuries sustained by the applicant could also be attributed in the case of fall from certain height. He further

admitted that there was an improvement from the date of admission of the applicant in the hospital and till the date of his examination on 22.01.2005 and stated that the bone is united.

10. In the evidence, R.W.1 deposed that it was not true that the applicant sustained said injuries as a result of accident arising out of and in the course of employment and stated that the applicant concocted false case and got the complaint registered through his wife. During the cross-examination, he deposed that Ex. D.2/Accident register (attested by the S.I. of police, Yellareddypet photo copy of the extract from the Register of Accident maintained by Gandhi Hospital, Hyderabad) reveals that the applicant had sustained the said injuries when he fell down from a height. For that, the finding of the Commissioner is that without examining the investigator of the appellant/insurance company and without taking steps to examine the authority which issued the Ex.D.2/accident register, for confrontation, it does not fit the bill as being cogent to be accepted without reservation, although it may sound plausible on the face of it.

11. The finding of the Commissioner is sustainable because in the evidence A.W.1 clearly stated that on 14.06.2004 when he stopped the Canter bearing No.AP 15T 3502 on the left side of the road and got down from it, the cargo van bearing No.AP 15U 2565 came in high speed with rash and negligent manner, dashed him and as a result, he sustained the injuries. Basing on Ex.A.1/copy of F.I.R., a case was registered on 17.06.2004 i.e. two days after the accident. Against column No.8 of Ex.A.1, it was mentioned that the complainant and all the family members went to Hyderabad for

providing treatment to the injured and hence, there was delay and the matter was reported to the police on 17.6.2004 at 19.00 hours. It was also mentioned in column No.7 that driver of Cargo van bearing No.AP 15U 2565 is responsible for the accident. Though in Ex.D.2/accident register it was mentioned that the applicant sustained injuries as a result of falling down from a height, the same is not the information furnished by the victim. The hospital authorities might have recorded it according to their wish. Except filing Ex.D.2, there was no corroboration. The appellant ought to have taken steps to examine the hospital authorities to prove the entry in Ex.D.2. Therefore, as rightly held by the Commissioner, the said Ex.D.2 is not proved as contemplated under law and it is no way helpful to the appellant to deny the compensation to the applicant.

12. With regard to the age, the applicant did not file any proof. In the complaint, the age of applicant was mentioned as 31 years. In Ex.A.2, his age is recorded as 24 years. In Ex.A.3/driving licence, his date of birth is recorded as 16.04.1973. In Ex.A.4/discharge certificate, his age is noted as 24 years. Considering the date of birth mentioned in Ex.A.3, the age of the applicant is rightly determined as 31 years by the Commissioner. The relevant factor in Schedule-IV of the Act is 205.95 and the minimum wage payable to the applicant, as fixed by the Government of A.P. for the driver of a light vehicle as on 14.06.2004 is Rs.2966/- (basic Rs.1874/- + VDA Rs.1092/-). As per Ex.A.2 and A.4, the injuries sustained by the applicant are non-scheduled one, attracting the provisions of Section 4(1)(c) (ii) of the Act. Ex.A.2 further suggests that the disability suffered by the applicant is

‘partial and permanent’ and that he is unable to drive the vehicle as perfectly as prior to the accident and the disability of applicant was estimated by A.W.2/doctor at 25% on Kessler’s scale. The Commissioner taking into consideration Ex.A.4/disability certificate and the opinion of A.W.2/doctor that there is improvement in the condition of the applicant from the date of accident till his examination of applicant on 22.1.2005, assessed the loss of earnings capacity of applicant at 60%. By applying the relevant factor 205.95 arrived the compensation at Rs.2,19,905/- ($60/100 \times 60/100 \times 2966/1 \times 205.95$). Besides that the Commissioner also awarded an sum of Rs.439/- towards Court fee and Rs.500/- towards Advocate’s fee, totalling Rs.2,20,844/-. By virtue of Ex.A.7/Ex.D.1 (insurance policy), the Commissioner made liable the appellant and the second respondent herein jointly and severally to pay the compensation to the applicant. The Commissioner further directed the appellant and the second respondent herein i.e. the opposite parties Nos.1 and 2 in the W.C.No.149 of 2004 to pay the applicant the sum of Rs.2,20,844/- by means of a Demand Draft drawn from any nationalised bank in favour of “The Commissioner for Workmen’s Compensation and The Assistant Commissioner of Labour, Hydeabad-I” within 30 days from the date of receipt of a copy of the order.

13. In view of the facts and circumstances discussed above, I find that the order of the Commissioner is legal and does not suffer with any legal infirmities warranting interference by this Court.

14. In the result, the C.M.A. is dismissed with costs while confirming the compensation granted by the Commissioner for

Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I in W.C.No.149 of 2004 dated 17.03.2006 awarding compensation of Rs.2,20,844/-, jointly and severally against the appellant and the 2nd respondent herein. The appellant and the 2nd respondent are directed jointly and severally to deposit the compensation amount of Rs.2,20,844/- towards compensation, if not already deposited, by way of Demand Draft drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I within 30 days from the date of receipt of copy of this order.

Advocate fee is fixed at Rs.2,000/-.

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

22nd March 2018
Tsr

JUSTICE N.BALAYOGI

