

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

C.M.A. NO.4628 OF 2004

JUDGMENT:

This appeal is filed by the Insurance Company, the second opposite party before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III at Hyderabad in W.C.No.112 of 2003 dated 28.9.2004.

2. The applicant claimed compensation under Workmen Compensation Act, 1923 for the injuries sustained by him during his employment as a cleaner on lorry bearing No.AP 11 W 6467 belonging to the first opposite party before the Commissioner. It was alleged that while he was employed as a Cleaner in the said lorry, the lorry met with an accident on 15.6.2003 while the lorry was proceeding from Kodad to Suryapet and when it reached Munagala village limits at Mudhula Cheruvu bus stop. The driver of the lorry drove the lorry in a rash and negligent manner and dashed against one stationed lorry. In the said accident, the applicant sustained grievous injuries and he was shifted to Osmania General Hospital, Hyderabad. The Police at Munagala, registered a case in Crime No.78 of 2003. The applicant stated that he was paid wages @ 3,000/- per month and he was aged about 26 years at the time of accident.

3. When notices were sent by the Commissioner, the first opposite party admitted the employment of the applicant as Cleaner in the lorry and also admitted payment of Rs.3,000/- p.m. as wages. The second opposite party contested the matter.

4. The applicant examined himself as AW1 and examined A.W.2-Doctor. He got marked Exs. A.1 to A.10 on his behalf. The Doctor who examined the applicant physically and radiologically found the following injuries:

- 1) Crush injury right hand with amputation of middle finger
- 2) Segmental fracture – shaft of right ulna
- 3) Fracture shaft of right radius; and
- 4) Fracture of proximal phalanx of right ring finger

5. The Commissioner for Workmen's Compensation stated that the applicant underwent surgery on 16.6.2003 at Osmania General Hospital and also on 5.7.2003. There were minimal movements of the fingers at right hand without hand grip. He stated that 50% of the movements of the wrist were restricted. The Doctor assessed the physical disability as 65% and stated that it was partial and permanent. The Commissioner assessed the loss of earning capacity as 100% and applying the factor of 216.91 to the wages of Rs.2,181/-, calculated the compensation at Rs.2,83,848/- by his order dated 28.9.2004. The same is challenged in the present appeal.

6. Learned counsel for the appellant submits that the assessment of loss of earning capacity at 100% for the injuries sustained by the applicant is erroneous.

7. The Commissioner took into consideration the evidence of A.W.2 and noticed that as per Ex.A3 Disability Certificate, the applicant lost handgrip and there were minimal movements of the fingers of right hand and there was gross restriction of movements in the right forearm besides restriction of 50% movements of the wrist. The Doctor opined that the applicant will not be able to do any sort of work with the right hand.

8. In view of the opinion of the Doctor and in view of the nature of employment of the applicant, the assessment of loss of earning capacity at 100%, cannot be found fault with in the absence of any evidence to the contra.

9. Hence, the Appeal is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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A. RAMALINGESWARA RAO,J

Date: 22.3.2018

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