

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

CMA.No.635 of 2009

J U D G M E N T:

This appeal is filed questioning the order dated 08.07.2005 in WC.No.17 of 2002 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

The case was filed in the lower Court by the applicant against his employer and the insurance company for an injury supposedly sustained by him when he was working as a cleaner on lorry bearing No.AP 27 U 4769. The said lorry belongs to the first opposite party and was insured with the second opposite party. Therefore, the claim for compensation is made on the ground that an accident occurred in the course of employment. The first opposite party entered appearance and admitted that the accident occurred. He also admitted the wages. The second opposite party, however, strongly denied the entire case and contested the matter. For the appellant, he was examined as AW.1 and Exs.A.1 to A.6 were marked. AW.2 is the Doctor, who treated the applicant and AW.3 is a witness who was examined to support the case of the plaintiff. For the respondents, no evidence was introduced. Ultimately, relying upon the medical evidence in this case, the Commissioner dismissed the application by his

order dated 08.07.2005, which is now impugned in this appeal.

This Court has heard Sri Nimmagadda Satyanarayana, learned counsel for the appellant and Smt. SAV Ratnam and Sri Madhava Rao Nalluri, learned counsel for the respondents and also seen the depositions.

The applicant himself filed the appeal as the case was dismissed. The grounds of appeal raised are also questioning the findings of the lower Court based on the evidence. The arguments before this Court by the learned counsel for the appellant and respondents concentrated on the medical evidence. The doctor, who treated the applicant was examined as AW.2 and in his chief-examination itself he states that there is no disability to the opposite party. He also deposes in his chief examination that there is no shortening of the limbs due to the injury and that he can attend to his normal functions. In the light of this evidence, it is argued by the learned counsel for the respondents that no compensation can be awarded.

On the other hand, the learned counsel for the appellant argued that the injury is admitted and that he was hospitalized is also admitted. So, he prays that compensation should be awarded.

This Court has examined the evidence in the light of the submissions made. Even in the deposition of AW.1, he did not depose to the effect that because of the injury sustained by him he is unable to carry out the job he was doing prior to the injury. After AW.2 was examined, AW.3 was examined, who stated that the deceased was hospitalized for a long time etc. This evidence of AW.3 runs contrary to the complaint that is filed. In the complaint, the allegation is that he is permanently disabled. There is no averment of his period of hospitalization or nor is the amount mentioned by AW.3 tallying with what is mentioned in the complaint. This Court is, therefore, of the opinion that the evidence of AW.3 is not very trustworthy. Therefore, the evidence of AW.2, who is an independent medical practitioner, will have to be considered. In his chief-examination itself, the doctor has said that the applicant did not sustain any permanent injury nor is there any loss of earning capacity. The doctor clearly deposed that there was no shortening of the limbs and that he can attend to his normal duties. It is also important to note that there is no cross-examination on these important aspects, which are deposed by the doctor. No medical or other evidence to the contrary was introduced to disbelieve the evidence of the doctor. If there is a shortening of the limb or such permanent affect due to the accident which prevented the applicant from carrying his normal duties, there should have been positive

evidence from his side and also effective cross-examination of the doctor.

In the absence of such evidence and in the absence of cross-examination, this Court is of the opinion that the lower Court did not make any mistake and that the order of the lower is correct.

Therefore, this Court holds that there are no merits in the appeal. The appeal is dismissed and the order of the lower Court is hereby confirmed. In the circumstances, no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.



D.V.S.S.SOMAYAJULU,J

Date: .03.2018

KLP