

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.290 of 2009

JUDGMENT :

This appeal is filed by the United India Insurance Company Limited under Section 30 of Workmen's Compensation Act having been aggrieved by the order in W.C.Case No.21 of 2005 dated 23.01.2007 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour: Circle-I R.R.District, Hyderabad, contending that in view of the evidence of A.W.2-doctor, the disability was 35% and hence, there is no justification for the Commissioner in assessing the loss of earning capacity of the applicant-first respondent herein at 50% and that the Commissioner ought to have considered the disability at 35% only instead of 50% and accordingly awarded the compensation.

2. The claim of the applicant-first respondent herein is that he was employed as a labour on the Tractor & Trolley bearing No.AP 24-A 5866 & 5867 by its owner-2nd respondent herein. On 23.2.2005, while the first respondent was proceeding on the said tractor from Patangi towards Koheda after unloading the bricks, the driver of the said tractor lost control over the vehicle and dashed to a Culvert No.48/8 at about 8.30 p.m. near Yellagiri village limits on National Highway No.9, as a result, the tractor and trolley fell down and the applicant along with other labourers received grievous multiple fracture injuries all over the body.

3. Immediately, the first respondent-applicant was shifted to People's Hospital at Kukatpally and was admitted as inpatient and was undergoing treatment by the time of filing of application. Due to the injuries received in the accident, he became permanent and partial disabled and lost his earning capacity. The applicant was earning a sum of Rs.3,000/- per month at the time of accident and prayed for a compensation of Rs.4,00,000/- along with interest.

4. The 2nd respondent herein denied his liability on the ground that the vehicle had a valid insurance policy at the time of the accident.

5. The appellant herein filed counter contending that the first respondent-applicant has to prove his age, employment and the accident having taken place in the course of employment.

6. The Commissioner having considered the pleadings of both the parties, settled the following issues for trial:

“1. Whether Sri S.Ramulu, S/o.S.Abbiah, was employed by the Opp. Party No.1 on 23.02.2005 (the date of accident) having been employed as a Labourer?

2. Whether the accident occurred during the course of his employment due to which the applicant has become permanent and partial disabled?

3. What is the percentage of disability?

4. Whether the sum of Rs.4,00,000/- claimed by the applicant is due to him towards compensation?

5. Which of the Opp. Party is liable to pay compensation to the applicant if any?”

7. In support of the claim, on behalf of first respondent-applicant, A.Ws.1 & 2 were examined and Exs.A.1 to A.10 were marked. On behalf of respondents, R.W.1 was examined and Ex.B.1 was marked.

8. After consideration of evidence, the Commissioner fixed the loss of earning capacity of first respondent at 50% and the disability permanent and partial at 35% and awarded the compensation of Rs.1,44,860/-.

9. Now the point that arises for consideration in this appeal is 'whether the Commissioner substantiated by fixing the loss of earning capacity at 50% and the compensation awarded can be sustained?

10. The first respondent-applicant himself examined as A.W.1 besides examining the doctor as A.W.2. His evidence is that the 2nd respondent herein appointed him as a labour upon the Tractor & Trolley bearing No.AP 24-A 5866 & 5867 and for the past one year from the date of accident, he was working as a labour on the said vehicle. A.W.1 was examined at length, but nothing was elicited to say that he is not under the employment of 2nd respondent herein. More so, during the cross-examination, A.W.1 clarified that there were eight persons working as labourers under the 2nd respondent herein and he was working since one year prior to the accident.

11. Accordingly, there is clinching evidence to establish that A.W.1 is a worker under the 2nd respondent and he is a workman under the Workmen's Compensation Act. The evidence of A.W.1 is that on

23.02.2005, he was present on the tractor and trolley as a labour under the 2nd respondent and while he was proceeding on the said tractor from Patangi towards Koheda after unloading the bricks, the driver of the said tractor drove the vehicle in a rash and negligent manner with high speed, lost control over the vehicle and dashed to Culvert No.48/8 at about 8.30 p.m. near Yellagiri village limits on National Highway No.9, as a result, the tractor and trolley fell down in the culvert and turned turtle. Ex.A.1 is the copy of F.I.R.; Ex.A.2 is the copy of charge sheet; Ex.A.3 is the panchanama; Ex.A.4 is the copy of sketch report; Ex.A.5 is copy of M.L.C. report; Ex.A.6 is copy of medical certificate; Ex.A.7 is original discharge card; Ex.A.8 is original outpatient card; Ex.A.9 is disability certificate issued by A.W.2; and Ex.A.10 is X-ray copy along with report.

12. A reading of Ex.A.1 to A.4 goes to show that the complainant-Jittu Janardhan Reddy under Ex.A.1 clearly asserted that on 23.02.2005 Gangavaram Ramulu, driver of the tractor, after unloading bricks at Patangi and while returning, drove the tractor at high speed in rash and negligent manner and at about 8.30 p.m., dashed to a culvert No.48/8 at N.H.9 road. About 5 labourers including the applicant in the tractor sustained injuries. The investigating officer after thorough investigation filed charge sheet under Ex.A.2 with a finding that on 23.02.2005 after unloading the bricks at Patangi and while returning along with labourers including the applicant and when it reached near Yellagiri village outskirts, at culvert No.48, driver of the vehicle drove

the vehicle with high speed in rash and negligent manner and dashed to culvert.

13. The mediators under Ex.A.3-panchanama, on observation of scene of offence, opined that the accident was occurred due the rash and negligent driving of the vehicle by its driver. In view of the above evidence, the accident is purely due to the negligent driving of the tractor by its driver, in which the applicant is a labour.

14. During the cross-examination, A.W.1 admitted that he did not file any proof to show that he is a labour on the tractor and trolley of 2nd respondent and also receiving Rs.3,000/- per month. Generally, we do not expect any document for engaging the labour. The 2nd respondent, who is the owner of the tractor has not denied the applicant as labour under him. The complaint under Ex.A.1 was drafted by the son of 2nd respondent wherein he clearly stated that the applicant is a labour engaged by his father on the said tractor. Therefore, there is an employer and employee relationship and the presence of the applicant on the tractor at the time of accident as a labour and the occurrence of the accident during the course of employment is proved.

15. However, with regard to the injuries received by the applicant, there is evidence of A.W.1 besides the documentary evidence under Ex.A.5 to A.8. It is the clinching evidence of A.W.1 that in the accident, he sustained grievous injuries like (a) fracture to both bone left leg; (b) Lacerated injury to Thigh; (c) Lacerated injury to left joint knee; (d) Abrasion injury to waist; and (e) grievous injuries to all over

the body. All the above injuries sustained by the applicant are during the course of employment. It is also his evidence that he was operated in the same hospital, steel rods were fixed in the right leg and the same are present in the body. His evidence is supported by the documentary evidence under Ex.A.5 certificate issued by the hospital dated 23.2.2005, wherein the medical officer certified that A.W.1 was brought to the People's Hospital, Kukatpally with grievous injuries. Ex.A.6 is the medical certificate issued by the same hospital, wherein it was certified that A.W.1, aged about 30 years, sustained fracture of left leg, both bones and injury to right thigh in the accident on 23.02.2005. Ex.A.7 is the discharge card, which shows that A.W.1 was admitted in the hospital on 23.02.2005 and was discharged on 27.03.2005. On examination, the doctor diagnosed fracture to right femur. In Ex.A.8-outpatient card also, the age of applicant was mentioned as 30 years. As per Ex.A.10, the applicant underwent surgery for fracture and lowered 3rd of right femur.

16. Accordingly, having considered the ocular evidence of A.W.1 supported by the documentary evidence under Exs.A.5 to A.10, it is amply established that the applicant sustained grievous injuries and he also underwent surgery.

17. A.W.2 is the doctor, who examined A.W.1 on 21.01.2006 and issued Ex.A.9-disability certificate dated 27.01.2006. After thorough examination of A.W.1 and on examination of medical reports and X-rays and other documents, he opined that the applicant is suffering for

the one year with comm. supra condylar fracture to right femur; fixing implants having painful movement. He also noticed that the applicant cannot sit and his right knee flexion is restricted to 85 degrees only. The applicant was operated on his right leg and steel rods are fixed in his right leg. The doctor advised the applicant to undergo another operation to remove the implants from his leg after healing the injury completely. A.W.2 opined that the applicant cannot do the work as labour like earlier. A.W.2 assessed the disability of applicant at 35% according to Mac.Bride's scale. A.W.2 issued Ex.A.9 disability certificate and he categorically stated that physically, the applicant's loss of earnings capacity is reduced to 50%. During the cross-examination, a suggestion was put to him that he exaggerated the loss of earning capacity of applicant. Though A.W.2 inadvertently stated that he has not mentioned loss of earning capacity in Ex.A.9, a perusal of Ex.A.9 certificate goes to suggest that A.W.2 specifically mentioned in Ex.A.9 that the disability of applicant is 35% and it is difficult for him to work as labour. He also mentioned that a surgery is needed to remove the implants. Though he has not mentioned functional disability in Ex.A.9, he is the proper person to speak functional disability. As already observed, A.W.2 has stated that the loss of earning capacity of applicant is 50% and therefore, the Commissioner considering the age of A.W.1 at 30 years and the loss of earning capacity at 50%, awarded the compensation of Rs.1,44,816/-. While awarding the compensation, the Commissioner, considered the decision of this Court in C.M.A.No.316 of 1997 dated 30.11.2000 wherein, this

Court held that the cleaner, who suffered injuries in the course of his employment and sustained 20 to 25 percent of physical disability, but as he cannot perform his duties as a cleaner as he was performing prior to the accident, he was held to be entitled for compensation for loss of earning capacity at 100%.

18. As seen from Ex.B.1, copy of insurance policy of the offending vehicle, the vehicle was insured with the appellant herein, which was in force from 10.02.2005 to 09.02.2006. The appellant has to indemnify the liability of the 2nd respondent-owner of the tractor. The evidence of R.W.1 is that the 3rd respondent herein is only a financier of the vehicle and because of hypothecation, the name of the 3rd respondent is mentioned in Ex.B.1 policy. He denied the suggestion that because of hypothecation, the liability of the owner of the vehicle is shifted to the financier. The Commissioner having considered the oral evidence of R.W.1, rightly held that the 3rd respondent is only financier of the vehicle and is not liable to pay compensation and that the appellant and the owner of the vehicle-2nd respondent herein are jointly and severally liable to pay the compensation.

19. In view of the above evidence and reasons stated therein, I am of the considered view that the Commissioner well considered the oral and documentary evidence on record and came to the right conclusion that the loss of earning is 50% as per the evidence of A.W.2, though the physical disability is permanent and partial 35% as certified in Ex.A.9. The age of the applicant is considered as 30 years basing on

the age mentioned in the medical record and his income was taken at Rs.2321/- per month basing on the Minimum Wages Act, 1948. There is no error or irregularity in assessing the monthly income of the applicant and also the loss of earning capacity at 50% and hence, the impugned order does not warrant any interference by this Court.

20. In the result, the appeal is dismissed with costs while confirming the order in W.C.Case No.21 of 2005 dated 23.01.2007 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour: Circle-I R.R.District, Hyderabad.

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

05th January 2018

Tsr

JUSTICE N.BALAYOGI

