

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

CMA No. 471 of 2007

JUDGMENT :

This is an appeal filed against the order dated 02.02.2007 in WC.No.83 of 2003 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam.

The applicant is the workman, who was injured in the accident. The case of the applicant is that he was working as a helper with the second opposite party for a monthly wage of Rs.2,400/- per month. As per the instructions of the supervisor of the first opposite party, he along with the other workers were carrying bricks; suddenly a sharp brick fell down on the left leg of the applicant, as a result, the applicant received cut injury including multiple injuries to his left leg. Immediately after the accident, the coworkers took him to the private hospital, Gajuwaka and on the instructions from the first opposite party, the applicant has taken to Simhagiri Hospital, Gajuwakada for further treatment as the injuries received in the accident are not healed. He further stated that the Doctors of Simhagiri hospital have admitted him and taken X-rays and identified further injuries to the applicant's left leg and assessed the disability at 30%. The first opposite party is the sub-contractor to the second opposite party and the second opposite party is principal employer of the works,

which belongs to the third opposite party and the third opposite party is the principal employer and the fourth opposite party is the insurer of the third opposite party. Stating that the said accident occurred during the course of employment, he filed the present application for compensation for the injury sustained during and in the course of employment. He prayed for compensation of Rs.90,000/-. First opposite party filed his counter denying the material allegations of the petition and demanded strict proof of the same. The second opposite party remained absent and was set *ex-parte*. The third opposite party has filed their counter denying the employment of the applicant with the second opposite party and prayed for dismissal of the claim. He further denied that the first opposite party never worked as a sub-contractor to the second opposite party. The fourth opposite party filed their counter denying all the material averments of the petition.

On behalf of the applicant, he himself was examined as a witness-AW.1. The applicant has examined Dr. A.Gopalakrishna, MS.Ortho as AW.2 and he stated that he is working as consultant orthopedic surgeon and after examining the applicant, he assessed the disability at 30% permanent partial in nature. For the applicant, Exs.A1 to Exs.A.9 were marked. The fourth opposite party examined one G.Aruna as RW.1. After considering the documentary and oral evidence, the Commissioner for Workmen's

Compensation passed the impugned order, wherein he directed payment of compensation of Rs.78,624/- by opposite parties 1 to 4 jointly and severally. It is this award of compensation that is assailed by the Insurance Company in this appeal.

I have heard Sri Kota Subba Rao, learned counsel for the appellant and Sri G.V.Srirama Murthy, learned counsel for the respondents.

The essential ground that is urged by the learned counsel for the appellant is that the certificate issued by the Doctor is not correct and that in view of the Explanation (2) to Section 4 of the Workmen's Compensation Act, 1923 (for short 'the Act') the Doctor was bound to take into account the percentage of loss of earning capacity in relation to the injuries specified in Schedule-I. According to the learned counsel, the Doctor in this case did not consider Schedule-I of the Act and mechanically gave a disability certificate-Ex.A.4 fixing the extent of disability as 30%. According to the learned counsel, the Doctor should go by the percentages given in Schedule-I of the Act only. He drew the attention of the Court to the injuries in this case and the corresponding entry in Schedule-I of the Act. According to him since the injury is to toes and foot, items 39 to 42 of schedule-I of the Act are applicable and therefore, the disability has to range between 1% to 14% only. Therefore, he states that the Doctor has made a mistake in ignoring the strict and mandatory

language of explanation (2) to Section 4 of the Act and that the compensation awarded is high.

In reply thereto, the learned counsel for the respondents states that the Doctor's evidence in cross-examination shows that there is a reason behind the assessment of the disability at 30%. The learned counsel drew the attention of this Court to the cross-examination of the Doctor, who was examined as AW.2. He points out that in the cross-examination of this witness by the fourth opposite party on 23.08.2006, the Doctor deposed as follows:

"It is true that the Workmen's Schedule lists around 10% for this injury, but in this case, the patient suffered in the reflex sympathetic dysprophy i.e. the condition of not unifying fracture with pain, which is clear for the patient X-rays of Ex.A.10 (4 X-rays). It is not true to suggest that I am giving evidence to help the applicant. I have not mentioned about RSD in Ex.A.3 and A.4."

According to the learned counsel, the Doctor relied upon the four X-rays, which are marked as Ex.A.10 and according to him, the four X-rays clearly reveal that there is no unity/healing of the fracture. Therefore, as per the learned counsel, there is no infirmity in the assessment of disability. The learned counsel also points out that no further questions were put to the witness on this conclusion that he reached. There was no suggestion also that the contents of X-rays are wrong and incorrect. The learned counsel also points out

that no contra evidence is introduced to rebut or impeach the Doctors' evidence.

After hearing both the counsels and after perusing the cross-examination of the Doctor, this Court is of the opinion that the assessment of disability at 30% is not wrong. Even otherwise, the Act is a beneficial legislation meant for the benefit of the workmen. Therefore, a hyper technical view cannot be taken. This Court also derives support from a Division Bench judgment reported in **Charan Singh v. G.Vittal Reddy and Another¹**.

The evidence on record shows that the applicant was treated for the injuries and he was also referred to AW.2 for second opinion as per the contents of Ex.A.2. Ex.A.3 reveals that the injured was treated by AW.2 from 16.12.2001 to 06.01.2002. Therefore, he was competent to assess the disability.

For all these reasons, this Court holds that there is no infirmity in the order passed by the lower Court.

The Appeal is, therefore, dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 23.01.2018
KLP

¹ 2003 (1) ANWR 741