

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.M.A. No.1057 of 2008

JUDGMENT :

The appellant/applicant aggrieved by the order dated 2.9.2003 in W.C. Case No.20 of 2002 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur, awarding Rs.1,96,088/- towards compensation against the claim of Rs.3,00,000/-, preferred this appeal.

2. The contention of the appellant is that the Commissioner having held that the applicant is a workman and the accident is arising out of and in the course of employment and accepting the disability at 70%, erred in fixing the loss of earnings at 80% for the driver of the lorry. He should have allowed the loss of earning capacity at 100%. It is further contended that the Commissioner erred in fixing the minimum wages as per G.O.Ms.No.71, dated 16.4.1991 and ought to have applied the revised minimum wages while awarding the compensation.

3. The case of the appellant/applicant in brief is that the applicant employed as driver of the lorry bearing No.AHJ 5558 by the 1st respondent which was insured with the 2nd respondent. on 19.12.1997, while the claimant was proceeding from Calcutta to Vijayawada, he met with an accident during the course of employment and sustained injuries. He was getting salary of Rs.2,000/- per month.

He was 27 years old and claimed compensation of Rs.3,00,000/-. The 1st respondent admitted the employment of the appellant as driver of the lorry bearing No.AHJ 5558 and sustaining of injuries by the appellant in the accident.

4. The 2nd respondent – Insurance Company's contention in the counter is that there is no permit and valid driving licence to the driver at the relevant point of time. Further, there is no valid insurance policy by the time of the accident.

5. After hearing, the following issues were settled for trial :

- 1) Whether the applicant was a workman as per the provisions of the Act and he received personal injuries in an accident arising out of and in the course of his employment?
- 2) Amount of compensation payable? And
- 3) Who are liable to pay the compensation?

6. In support of the claimant, A.Ws.1 and 2 were examined and Exs.A1 to A4 were got marked. For respondents, no oral or documentary evidence was adduced.

7. Now, the point that arises for determination is :

“Whether the Commissioner erred in assessing the loss of earning capacity at 80% and the application of minimum wages as per G.O. Ms.No.71, dated 16.4.1991 ?”

8. The learned counsel for the appellant contended that the Commissioner having held that the applicant is a workman under the 1st respondent, met with an accident arising out of and in the course of employment and sustained injuries and the disability is at 70%, ought

to have assessed the loss of earning capacity at 100%, instead of 80%. The claimant himself is examined as A.W.2. The claimant in the evidence affidavit reiterated the same facts which pleaded in the claim petition. His clinching evidence is that on 19.12.1997 while he was returning from Calcutta towards Vijayawada, he met with an accident in Tangi within the limits of Tangi Police Station, Orissa.

9. It is also the evidence of A.W.2 during the cross-examination that he originally filed M.V.O.P. No.1083 of 1999 and the same was withdrawn. The Police filed charge-sheet against him for his negligent driving. Ex.A3 is the driving licence of A.W.2, according to which, he is authorized to drive transport vehicle and awarded badge No.724. The driving licence is valid from 5.11.1996 to 4.11.1999, whereas the accident was occurred on 19.12.1997, by which date A.W.2 is having valid and effective driving licence to drive the lorry.

10. The 1st respondent filed counter admitting that he employed A.W.2 as driver of the lorry bearing No. AHJ 5558. Ex.A2 is the copy of F.I.R. wherein it is clearly asserted that the driver of the truck sustained injuries in the accident.

11. The evidence of A.W.2 supported by Ex.A2 – copy of F.I.R., Ex.A4 – police report and Ex.A1 – case sheet goes to suggest that on 19.12.1997 the driver of the truck – A.W.2 sustained injuries. In Ex.A5, A.W.2's name is mentioned. A.W.2, who is a workman under the 1st respondent, sustained injuries in the accident

12. With regard to date of birth, the claimant did not file any documents and there is a driving licence copy Ex.A3, according to which he is having driving licence to drive heavy goods vehicle which is valid up to 4.11.1999 as per endorsement dated 5.11.1996. So, A.W.2 is having valid and effective driving licence at the time of accident to drive the lorry. In Ex.A3 – driving licence, the date of birth of A.W.2 is mentioned as 6.7.1965, where as accident occurred on 19.12.1997, therefore, the age of the claimant was 32 years at the time of the accident. The claimant did not file any proof of income.

13. A.W.1 is the Doctor whose evidence is that A.W.2 was admitted in UGH, Vijayawada on 23.12.1997 having sustained injuries in the road traffic accident occurred on 19.12.1997. A.W.2 sustained fracture of right femur with vascular impairment. On examination of A.W.2 on 23.12.1997, A.W.1 noticed gangrene of right lower limb below the site of fracture and x.ray revealed fracture of the femur in supra condula region and fracture dislocation of the right ankle joint. X.ray No.2406/23-12-1997 on 24.12.1997 show amputation above knee was performed and he was treated in the hospital till 19.1.1998. As per the case sheet under Ex.A1, A.W.2 is a lorry driver by profession and disability was assessed at 70% which is permanent and partial. A.W.1 – Doctor further stated that A.W.2 cannot work as driver of the lorry. During the cross-examination the only suggestion is disability assessed is excessive. Further, A.W.1 stated that A.W.2 may be able to do a stationery job.

14. Absolutely there is no evidence produced by the applicant that the injured/claimant is not able to carry out any other work. In such circumstances, the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur, having marshalling the facts and considering the evidence on record, both oral and documentary, particularly the evidence of A.Ws.1 and 2, came to the right conclusion with regard to loss of earning capacity. Considering the evidence of A.W.1 that there is a right ankle amputation to the claimant – A.W.2 and the disability is assessed at 70% which is permanent and partial and he cannot work as a driver of the lorry and on personal and physical examination of A.W.2, the Court assessed the loss of earning capacity at 80%, which is legal, valid, because A.W.2 can earn by doing works other than driving.

15. The Commissioner has taken the age of A.W.2 as 32 years considering Ex.A3 – driving licence, wherein the date of birth of A.W.2 is mentioned as 6.7.1965, whereas accident occurred on 19.12.1997.

16. Since the claimant did not adduce any proof of income, the Commissioner, taking into consideration the minimum wages fixed to H.V. driver in public motor transport vide G.O.Ms.No.71, dated 16.4.2001, age of the applicant as on the date of accident on 19.12.1997, assessed the wages at Rs.1,215/- + VDA of Rs.1,053/-, totalling Rs.2,268/- and restricted the same to Rs.2,000/- for the purpose of calculation of compensation as per the provisions of the

Workmen's Compensation (Amendment) Act, 1995. He arrived the compensation at Rs.1,95,696/- besides stamp duty of Rs.392/- and awarded a total compensation of Rs.1,96,088/- and the same was directed to be deposited by means of D.D. drawn in favour of Commissioner for Workmen's Compensation, Guntur on State Bank of India, Guntur within 30 days from the date of receipt of the order and directed to submit the D.D. in the office of the Deputy Commissioner of Labour, Guntur for further action. The impugned order is legal, valid and strictly in accordance with the provisions of the Motor Vehicles Act. It does not suffer from any legal infirmities warranting interference in the appeal.

17. In the result, C.M.A. is dismissed while confirming the order dated 2.9.2003 in W.C. Case No.20 of 2002 passed by the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur, awarding Rs.1,96,088/- towards compensation against the claim of Rs.3,00,000/- against the respondents jointly and severally, which shall be deposited within 30 days from the date of receipt of a copy of the order.

18. With regard to the interest and the penalty, the impugned order is silent; therefore, the applicant is at liberty to agitate the same before the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur as per the provisions of the Workmen's Compensation Act.

19. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

03rd April, 2018

skmr

