

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

C.M.A.No.977 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited questioning the order dated 26.11.2005 in W.C.No.41 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

2. The case of the applicant before the Commissioner is that the applicant was working as a cleaner on the bus bearing No.AP22U-225 belonging to the first respondent and insured with the second respondent. It is averred that on 16.08.2002 the applicant was working as a cleaner on the hired bus which is under APSRTC. In the early hours, there was some mechanical trouble and so the cleaner went down to tighten the bolt. The driver suddenly started the bus and the applicant-cleaner came to the tyre of the bus and sustained injuries. Basing on this, he filed an application seeking compensation.

3. The first opposite party filed a counter denying the entire case while admitting that the applicant worked as a cleaner of the bus in question. The second opposite party denied the entire case set up and prayed that the application has to be dismissed. The second opposite party also filed an additional counter stating that the cleaner and conductor are not covered under the policy. Therefore, they prayed that the application should be dismissed. For the applicant, AW.1

was examined and Exs.A.1 to A.7 were marked. For the respondents, a private medical practitioner, who examined the applicant, was examined as RW.1 and the Asst. Accounts Officer of OP-2 gave evidence as RW.2. Basing on the evidence and submissions, the Commissioner came to the conclusion that the applicant is entitled to compensation of Rs.1,31,278/-, which is now questioned in the appeal.

This Court has heard Smt. Kalpana Ekbote, learned counsel for the appellant/insurance company and Sri A. Narasimha Reddy, learned counsel for the first respondent/applicant.

The short and simple question on which the learned counsel argued is about the assessment of the loss of disability as 50%. As per the appellant, the Doctor stated that the disability was only 20 to 25% and so awarding 50% as loss is not correct. The other issue that is argued before this Court is that the APSRTC which hired the vehicle, is a necessary party. In reply thereto, the learned counsel for the first respondent/applicant argued that the insurance policy is subsisting and that the employer is the second respondent/OP-1. Therefore, he argued that as the application is under Workmen's Compensation Act, the hirer is not necessary party. The learned counsel also argued that the assessment of loss of earning is correct.

This Court on an examination of the material holds that the hirer of the vehicle is not necessary party. The contract of the insurance is between OP.1-owner of the vehicle and OP.2-

Insurance Company. The claim is under the Workmen's Compensation Act. There is no prohibition in law for hiring the vehicle to the Andhra Pradesh State Road Transport Corporation. Therefore, this Court holds that APSRTC is not a necessary and proper party to this case.

In ***National Insurance Company Limited v. K. Yadamma***¹, the learned single Judge of this Court held that even if the vehicle is used by the third party with the consent of the owner, the owner continues to be liable to pay the compensation.

The next issue is about the loss of earning capacity. The injuries as can be seen from the record are fracture of the pelvis, fracture of the right clavicle, right ribs etc. These are described in the claim statement and also described with the reasonable certainty in the FIR. The injuries to the pelvis, clavicle etc., are described in Ex.A.3-Wound Certificate of the medical officer and also in Ex.A.4-disability certificate. The Doctor, who examined the applicant, was examined as PW.1.

As rightly noticed by the Commissioner, there are three fractures. There is a shortening of the leg by three inches also. The Commissioner in para-27 of the impugned order has noticed and observed that the loss of earning capacity is to be estimated taking into consideration the nature of the duties of the applicant. In this case, as can be seen from the application, the applicant is a cleaner of the vehicle. With the shortening of the leg by three inches and fracture to the

¹ 2005 (3) ALD 643

clavicle, there will be definitely a difficulty and the shortening of the leg will cause a definite amount of difficulty in the discharge of duties of the cleaner of the vehicle. The assessment of loss of earning capacity cannot be made with mathematical precision in all cases. In this case, the Commissioner in the opinion of this Court has rightly considered the facts and circumstances and had arrived at a conclusion that there is a loss of earning capacity approximately as 50%. This is one-time compensation that is being paid, despite the permanent disability that the applicant has sustained. Therefore, this Court is of the opinion that there is no error in the assessment of loss of earning capacity. Both the points urged in the appeal are thus decided against the appellant. This Court does not find any infirmity in the impugned order passed nor was any serious error pointed out in the course of the oral submissions before this Court.

For all the above reasons, the appeal is dismissed. The order dated 26.11.2005 in W.C.No.41 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar is confirmed. However, in the circumstances of the case, there shall be 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: 27.04.2018
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