

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A. No.3319 OF 2004

JUDGMENT:

This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act'), by the appellant-insurance company aggrieved by the order dated 14.06.2004 in W.C. Case No.103 of 2001 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-insurance company and perused the record. Though the matter is posted 'for orders', there is no representation for the respondent-claimant. Since it is an appeal of the year 2004, the appeal can be disposed of on merits.

3. Learned counsel for the appellant-insurance company would contend that the claimant did not suffer any injury in the road accident occurred on 06.11.2001, during the course of employment under the owner of the lorry bearing No.AP I 361. He further contends that the Assistant Commissioner of Labour granted compensation holding that the claimant suffered 100% loss of earnings, which is not in accordance with law and ultimately prayed to set aside the order under challenge.

4. In view of the submissions made on behalf of the appellant, the following points have come up for determination:-

1. Whether the claimant-cleaner of the lorry suffered injuries on 06.11.2001 in the road accident while discharging his duties under the owner of the lorry?
2. Whether the assessment and grant of compensation of Rs.2,34,446/- is proper?

5. To prove that the claimant suffered injuries in the above accident during the course of employment under the owner of the lorry

bearing No.AP I 361 on 06.11.2011, claimant/applicant deposed as A.W.1 and A.W.2-doctor was examined and Ex.A1 certified copy of FIR, Ex.A2 certified copy of charge sheet, Ex.A3 original MLC issued by Osmania General Hospital, Hyderabad, Ex.A4 original discharge ticket issued by Osmania General Hospital, Ex.A5 prescriptions issued by Dr.G.Subash Rao, Ex.A6 original disability certificate, Ex.A7 opinion of the doctors at Osmania General Hospital, Ex.A8 xerox copy of R.C. book of the lorry, Ex.A9 photo showing the disability of the applicant, Ex.A10 certified copy of alteration memo issued by the Station House Officer, Maheswaram and Ex.A11 X-ray films without reports, were marked.

6. No evidence was adduced on behalf of the opposite parties. Ex.B1 copy of policy of insurance was marked on behalf of opposite party No.2, who is the appellant herein.

7. There is no single document except the self-serving statement of A.W.1 that he met with an accident on 06.11.2001 while he was discharging duties as a cleaner on the lorry bearing No.AP I 361 belonging to opposite party No.1. He stated that he got fracture on his both legs below the knee and admitted into a private hospital and had taken treatment. Thereafter, the police shifted him to Osmania General Hospital, Hyderabad. There is no documentary evidence to establish that the claimant had taken treatment in Baba Ayurvedhic Hospital (private hospital) or Osmania General Hospital, as deposed by him. No prescription, no admission slip or any kind of document is filed to substantiate his contention. Further, there is specific admission of the claimant that he filed O.P. under Motor Vehicles Act against the owner of the Tata Sumo bearing AP 10K 5069, which dashed him and caused subject injuries and the same is pending before the City Civil Court,

Hyderabad. In his evidence, he stated that he would withdraw the said O.P. but no such withdrawal is placed on record.

8. As per the evidence on record, the claimant did not suffer injuries when he was proceeding by lorry bearing No.AP I 361 on 06.11.2001. When he got down from the said lorry and passing on the road, he suffered injuries due to the rash and negligent driving of the Tata Sumo bearing No.AP 10K 5069. When the applicant had filed O.P. under the M.V. Act against the offending vehicle, he ought not have invoked the jurisdiction of Labour Court.

9. In the absence of any oral or documentary evidence, it is difficult to hold that the applicant-claimant suffered injuries as contended by him during the course of his employment under opposite party No.1. There is no dispute with regard to insurance of the lorry bearing No. AP I 361. Merely because lorry bearing No.AP I 361 was insured with appellant-insurer, the applicant-claimant has no right to claim compensation. Under these circumstances, it cannot be held that the applicant-claimant suffered injuries during the course of employment under opposite party No.1. The finding recorded to that effect is erroneous and it is liable to be set aside. In view of the same, the Tribunal ought not to have granted any compensation. Therefore, the impugned order passed in W.C.No.103 of 2001 on 14.06.2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad, is set aside.

10. Accordingly, the appeal is allowed. No costs.

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

Dr. SHAMEEM AKTHER, J

Date: 20.06.2018
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