

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

C.M.A.No.103 of 2007

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the United India Insurance Company Limited questioning the order dated 04.11.2006 in W.C.No.152 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Hyderabad.

The case before the Commissioner was filed by the applicant claiming compensation for the injury sustained by him. His case is that he was employed by the first opposite party (OP-1) as a cleaner on the lorry bearing No.AP5T-1877. As per the case, on 28.07.2004 the said lorry met with an accident and the applicant sustained injuries. Claiming compensation for the injuries, he filed the case against the owner of the lorry (OP-1) and the insurer of the lorry (OP-2).

OP-1 did not appear before the Commissioner and was set *ex-parte*. OP-2/Insurance Company appeared and filed a counter denying the entire contents of the application. In the first counter that is filed in September 2004, they have denied all the allegations. In the second counter that is filed in May 2005, it is further pleaded that the applicant was filed a case before the Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari at Rajahmundry and so this case cannot be allowed.

After considering the oral and documentary evidence and the submissions made, the Commissioner came to a

conclusion that the applicant sustained injuries that are mentioned in the medical record and that he is entitled to compensation. He awarded total compensation of Rs.3,04,266/-. This order of the Commissioner is now assailed in the present appeal.

This Court has heard Sri V. Sambasiva Rao, learned counsel for the appellant/Insurance Company.

The learned counsel for the appellant essentially concentrated on ground No.7 raised in the grounds of appeal particularly about the evidence of AW.2-doctor and his certificate. He argues that AW.2-doctor is a stock witness of all the injured employees and apart from that he did not treat the applicant in this case. His argument is that the assessment of compensation is very high and that the Commissioner wrongly relied upon the Doctor's evidence in awarding the compensation.

This Court noted the submissions, perused the record that is filed and notices the following:

Dr. G. Subash Rao is an Orthopedic Surgeon. He was examined as a witness (AW.2), but in the entire evidence that is given, no suggestion was put to him that he is a 'stock witness' or that he is regularly deposing for injured workmen in the Court. The insurance company which is now alleging that the witness is a stock witness should have filed the testimony given by this Doctor in other cases or certified copy of the orders in other cases where his evidence was

disbelieved on the ground that he is a stock witness. No such attempt was made by the appellant.

In addition, this Court also notices that the Doctor on oath stated that the injuries sustained are i) mal union of the left leg both bones with C 2" shortening; and ii) mal union of the right tibia with 3" loss of tibia C stiffness of the right ankle joint. In his cross-examination also he reiterated the injuries. Exs.A.4 & A.5 are the discharge summaries of Osmania General Hospital, Hyderabad and Kakinada Government Hospital. Ex.A.6 is the disability certificate. Ex.A.13 is an x-ray film and Exs.A.14 & A.15 are the x-ray reports. Absolutely, no evidence was let in to contradict the evidence given by the Doctor on the basis of these exhibits. The shortening of the elbow, fractures etc. are clearly verifiable facts. If the appellant-insurance company was of the opinion that the injuries sustained were not correct or that the deposition of AW.2 is not correct, they should have cross-examined the witness at length on the basis of these available documents. They could have also introduced independent medical evidence to discredit and disprove the contents of these exhibits and the deposition of AW.2. Having failed to do so in the lower Court, they cannot now urge that the evidence of AW.2 is to be disbelieved. The mere fact that he is a private doctor cannot lead the Commissioner or this Court to a conclusion that his evidence cannot be believed. Consequently, the assessment of disability on this basis

cannot be disbelieved as the doctor deposed that the applicant cannot work as a cleaner.

Cross-examination is an important tool in a lawyers skill set and is in fact a major weapon in his arsenal of skills. The purpose of cross-examination is to bring out the truth and also to discredit a witness and his testimony. The law on this is also so well settled and is so clear that it does not require repetition. Time and again, the highest courts of the land have held that failure to cross-examine a witness leads to a conclusion that the party did not have anything to say about the testimony. The decision reported in ***Man Kaur (Dead) by LRs. v. Hartar Singh Sangha***¹ is being referred to for this purpose.

This Court is therefore of the opinion that the appellant/insurance company cannot raise any issue about the character of AW.2 and his evidence. For all these reasons, this Court holds that the appellant has failed to prove that the evidence of AW.2 is tainted or is not correct. The assessment of disability based on this testimony is held to be correct.

This Court finds that there are no merits in the appeal. Accordingly, the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

¹ 2010 (10) SCC 512

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 25.06.2018
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