

THE HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A. No.17 of 2008

JUDGMENT:

This appeal is filed by the appellant/applicant in W.C., who is dissatisfied with the orders passed in W.C.No.32 of 2006, dated 7.11.2007 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Ongole.

The case of the applicant is that he was aged about 21 years and working in the lorry belonging to first Opposite Party 1/Respondent No.1 in appeal, which is insured with the second Opposite Party/Respondent No.2 in appeal. It is his case that he is drawing monthly wages of Rs.2,500/-. On 11.09.2005, while he was discharging his duties on lorry No. AP 27/V 6589, he came into contact with a live electric wire sustained burn injuries all over the body. Seeking compensation for the same, he filed the case in the Lower Court. The First Opposite party appeared and he admitted the employment, wages and occurrence of accident of the applicant while on duty, but contended that the injuries sustained by the applicant are simple in nature and no permanent disability is sustained by him due to accident. Opposite Party No.2 denied the claim and prayed that the case should be dismissed.

Before the Commissioner, the applicant was examined as AW-1. The doctor, who gave the certificate, was examined as AW-2 and Exs. A-1 to A-7 were marked on behalf of the applicant. For the respondents, no oral evidence was let in but a copy of the

insurance policy was marked as Ex.R-1. Based on the evidence and the averments, the Commissioner directed the Opposite Parties 1 and 2 to pay compensation of Rs. 1,51,634/-. The said order dated 7.11.2007 was impugned in this appeal.

This Court has heard Sri K.Ananda Rao, learned counsel for the appellant and Sri S.Agastya Sharma, learned counsel for the respondent No.2.

It is the contention of learned counsel for the appellant that the age of the applicant/appellant is 21 years and that the Commissioner committed an error by adopting the age of the appellant as 22 years. In response thereto, learned counsel for the respondents submits that the Commissioner noticed the age of the applicant as 22 years by extracting the same from the F.I.R. which is mentioned by the applicant himself. Therefore, they contend that this is a more authentic record based on the statement issued by the applicant himself. This Court finds substantial force in the submission made. The applicant himself has filed the FIR which shows his age as 22 years. No document is filed to prove the correct age of the applicant. Therefore, the adoption of age of the appellant as 22 years does not suffer from any defect.

The other aspect that was argued by the learned counsel for the appellant is that the monthly wages of the applicant are mentioned as Rs.2,500/- and that the Commissioner committed an error in adopting the wages as Rs.2,429/-. Learned counsel for the respondents pointed out that the appellant has not filed any

proof to show that his wages are Rs.2,500/- per month. In the absence of any clear evidence to that effect, the Commissioner rightly adopted the minimum wages that are payable to a driver. This aspect of adopting the minimum wages as salary has been approved by this High Court also in number of earlier judgments. This Court finds no reason to differ from the same.

Regarding the last issue relating to percentage of loss of earning capacity sustained by the appellant, it is clear that all the injuries that are sustained by the applicant are burn injuries. There is no fracture or amputation of any part of the body of the appellant or any other injuries as can be seen from the Accident Report of the Hospital, which is marked as Ex.A-4. Even the Doctor, who treated the appellant, opined that the loss of earning capacity is 47%, and he also pointed out that there are extensive burn injuries all over the body of the applicant. In his evidence, he has calculated a particular value for each of the injuries sustained by the appellant and came to the conclusion that the loss of earning capacity is 47%. There is no cross examination on this aspect. The cross-examination, did not in any way shake the testimony of the doctor. In the absence of any evidence, this Court does not find any reason to disagree with the evidence of AW-2, who is a trained medical practitioner.

In view of all of the above, this Court is the opinion that the order passed by the Lower Court does not suffer from any infirmities. There are no merits in the appeal. Hence, the appeal is dismissed. In the circumstances, no costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 28.02.2018

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