

HONOURABLE SRI JUSTICE N.BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.1157 of 2008

JUDGMENT

The appellant / Opposite Party No.2 (herein after called as appellant/OP.No.2) - New India Assurance Co., Ltd., preferred this appeal aggrieved by the order dated 15th September, 2005 in W.C.No.32/2003, whereby, the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahaboobnagar allowed the aforesaid W.C., awarding compensation of Rs.1,32,327/- and directed the appellant/OP.No.2 herein and the 2nd respondent/ Opposite Party No.1 (herein after called as 2nd respondent / OP.No.1) to pay the said amount to the 1st respondent / applicant. Both the OP No.1 and 2 are directed to deposit the said total amount by way of a demand draft drawn on any Nationalised Bank and drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, within (30) days from the date of receipt of this order, failing which the 1st respondent / applicant is entitled for interest @ 9% per annum on the amount of compensation from the date of filing of the application.

2. The appellant/OP.No.2 mainly contended that the Commissioner failed to see that the driver is not having valid and permanent driving licence at the time of accident and also failed to see that there is no actual disability to the injured

applicant and erred in assessing the loss of earning capacity as 40%, as the applicant is continuing as driver and there is no actual loss of income. Further contended that absolutely, there is no evidence showing the 1st respondent / applicant suffering injuries in the 1st accident, as he found driving another vehicle bearing No.AP-22-U-4786 caused another accident on 16.09.2002. He might have received injuries in the 2nd accident.

3. The claim of the applicant / 1st respondent is that he worked as Driver in the employment of the 2nd respondent/O.P. No.1, who is the owner of Tata Sumo vehicle bearing No.AP-22-D-8181. On 25.10.2001, while he was proceeding as driver on the said vehicle, at about 14.00 hrs from Mahabubnagar towards Marrikal, on the state high way and when the vehicle reached near Paspula Village bus stage, the vehicle turned turtle and an accident occurred and in the accident he sustained grievous injuries all over the body. Immediately, he was shifted to Government Hospital, Mahaboobnagar for treatment.

4. The 2nd respondent/O.P.No.1 filed counter and admitted that the 1st respondent / applicant was employed as driver on the Tata Sumo Vehicle bearing No. AP 22 D 8181 and that the 2nd respondent / OP.No.1 is the owner of the said vehicle. Further admitted that the applicant was paid wages of Rs.4,000/- per month besides batta. The 2nd respondent / O.P.No.1 stated that the applicant was in good health at the time of accident and the amount of compensation claimed is in

excess and is out of proportions which the applicant is not entitled. The 2nd respondent / O.P.No.1 further stated that the vehicle was insured with the appellant / OP No.2 vide insurance policy No. 611501/31/01/03971, which is valid from 13.08.2001 to 12.08.2002.

5. The appellant / OP.No.2 also filed counter, contending that the Tata Sumo vehicle bearing No.AP 22 D 8181 was not involved in the accident. There is no employer and employee relationship between the first respondent / applicant and the 2nd respondent / O.P.No.1. The appellant /O.P.No.2 denied that the applicant sustained injuries in the accident, which arose out of and in the course of his employment, resulting in permanent disability and the said Tata sumo was insured with the appellant / O.P.No.2 at the material time of accident, and the applicant was having a valid and subsisting driving licence and that the vehicle was roadworthy to ply. The appellant / O.P.No.2 further contended that in any case, amount of compensation claimed is excessive and not in accordance with law. Since the accident occurred due to negligence of the first respondent / applicant himself the appellant/ O.P.No.2 is not liable to pay any compensation.

6. Basing on the rival pleadings, the learned Commissioner framed the following issues for settlement:

Whether the applicant Sri Md. Ramjoddin, met with an accident on 25.10.2001, which arose out of and in the course of his employment as driver

on the Tata Sumo Vehicle bearing No. AP 22 D 8181 in the employment of the 1st opposite party and sustained injuries?

If yes, what is the percentage of physical disability and the consequent loss of earning capacity suffered by the applicant

Who are liable to pay compensation to the applicant? and

What is the amount of compensation entitled by the applicant?

7. In order to prove the respective claims, the first respondent/applicant was examined as A.W.1 and Dr.M.J.VijayaKanth, Civil Assistant Surgeon, Government Hospital, Mahabubnagar was examined as A.W.2. and documents got marked as Ex.A.1 to Ex.A.8.

8. The Assistant Administrative Officer of the Appellant is examined as R.W.1 and Ex.B.1 to B.5 were got marked as documentary evidence on their behalf.

9. The consistent evidence of A.W.1 is that the second respondent / OP.No.1 is the owner of the Tata Sumo vehicle bearing No.AP 22 D 8181. The applicant was appointed as Driver to the second respondent /O.P.No.1. During the cross examination, A.W.1 admitted that at the time of accident on 25.10.2001 at 14.00 hrs. the first respondent / applicant was driving the vehicle Tata Sumo and it was of 1999 model and is a new one. He further admits that the applicant worked for about six months on the offender vehicle No. AP-22-D-8181. The

further evidence of A.W.1 was that when the Tata Sumo reached near Paspula village bus stage, the vehicle turned turtle, resulting in an accident and in the accident he sustained fracture of right shoulder. The Commissioner, after elaborate discussions with the evidence of the A.W.1 and A.W.2, came to the conclusion that the evidence of A.W.1, together with the exhibits, it could safely be inferred that the first respondent/applicant was in the employment of the second respondent/ OP.No.1 on the insured vehicle Tata Sumo bearing No. AP 22 D 8181 as driver and met with an accident on 25.10.2001 in the course of his employment.

10. The contention of the appellant/OP.No.2 is that the first respondent / applicant did not receive any injury in the accident occurred on 25.10.2001. He received injuries in the subsequent accident occurred on 16.09.2002.

11. The Assistant Administrative Officer of the Appellant is examined as R.W.1 on behalf of the appellant /OP.No.2 In his evidence, R.W.1 said that the case of the first respondent/applicant is that he met with an accident and suffered 25% disability as per the certificate issued by A.W.2-Dr. M.J.VijayaKanth, Civil Assistant Surgeon, Government Hospital, Mahabubnagar, and the first respondent/ applicant cannot drive the vehicle either 2 wheeler and 4 wheeler are not correct. Because the first respondent/applicant, who claims compensation was met with another accident on 16.09.2002 on

the Vehicle bearing No. AP-22-U-4786 and committed accident, which was registered in Crime No.81/2007 in Devarakadra Police Station, which speaks that the first respondent/applicant is continuing his profession as driver and not disabled and as such he is not entitled for the compensation. The first respondent/applicant became disabled due to injuries sustained in the accident occurred on 16.09.2002. He converted his driving licence from non transport to transport on 10.05.2002 and it means after the accident dated 25.10.2001, if the applicant is actually disabled and he cannot drive the vehicle, the RTA officials shall not renew or allow the endorsement on the driving licence. The wound certificate was issued by the hospital officials after police closed the case as accidental and wound certificate was filed by the applicant on 12.12.2002 i.e. it was prepared after 14 months of the accident and handwriting and signature are different in the requisition form filed by the applicant which is the one available in the Police Station. This will clearly speaks that the wound certificate is not a genuine one and created by the petitioner. To substantiate the evidence, the appellant /OP.No.2 filed Ex.B.1 issued by the Additional Licencing Authority, Mahaboobnagar, wherein it was certified that as per the office records driving licence No.4512/M/2000 dated 18.09.2000 was issued to Sri Md.Ramjoddin to drive light motor vehicle (N T) only. However, the Driving Licence was converted into transport and also issued PSV Badge No.753 of 2002 on 10.05.2002.

12. Ex.B.2 is the requisition of the Sub Inspector of Police, Marrikal dated 26.10.2001 to the Medical Officer, Government Civil Hospital, Mahaboobnagar, requesting to treat the first respondent / applicant and issue medical certificate for taking legal action.

13. Ex.B-3 is the charge sheet and Ex.B-4 is the FIR in crime No.81/2002 dated 16.09.2002, which reveal that basing on a complaint of the GollaYadaiah a case was registered against the first respondent / applicant in respect of the accident occurred on 16.09.2002 at 17.45 hours, involving Jeep bearing No.AP 22 U 4786. The allegation is that on 16.09.2002 at 5.45 P.M. the said Jeep came in a rash and negligence manner and dashed cycle of Mallaiah, causing bleeding injuries to him and committed offence under section 330 IPC. The evidence of the R.W.1 is corroborated with the documentary evidence filed by way of Ex.B.2 to B.4, which could only establish that the first respondent /applicant is a driver of the Jeep bearing No. AP 22 U 4786 as on the date of accident on 16.09.2002.

14. The Commissioner considering the evidence of R.W.1 and documentary evidence of Ex.B.2 to B.4, came to the conclusion that there is nothing to disbelieve the documents filed as Ex.B.1 to Ex.B.5. Therefore, it could clearly establish that the first respondent/applicant was found driving another vehicle on 16.09.2002 and caused another accident. Therefore, the first

respondent / applicant has caused both the accidents on 25.10.2001 and another on 16.09.2002.

15. The present application was filed against the employer of the vehicle on which the first respondent / applicant caused accident on 25.10.2001 and it is also clearly established that the applicant met with an accident and suffered injuries on 25.10.2001.

16. A.W.2- Dr.M.Vijaya Kanth, who examined the first respondent / applicant clearly stated that on 10.09.2003 he examined A.W.1 and found that he met with an accident and has suffered a grievous fracture of right humerus in the said accident. The doctor assessed the physical disability of the applicant at 25% and in his evidence the doctor said that the applicant will not be able to drive a vehicle because of the injuries sustained by him. He further stated that the case of the first respondent/applicant was recorded as a Medico Legal Case and it was further recorded that the applicant met with an accident. He was treated by one Dr.A.Anand and care sheet was written by Dr.Swaroop Rani, which was marked as Ex.A.7.

17. The consistent evidence of A.W.1 clearly corroborated with the evidence of Dr.M.VijayaKanth, who is concerned with Government Hospital and public servant. The Ex.A.7 – the care sheet and the Ex.A.8 – X-ray films clearly shows that the first respondent / applicant sustained fracture in right shoulder.

Therefore, basing on the above documentary evidence the Doctor assessed the disability of the first respondent / applicant as 25% and in his evidence the doctor said that the applicant will not be able to drive a vehicle because of the injuries sustained by him. Considering the injuries sustained and the nature of employment, the Commissioner assessed the loss of earning capacity of the applicant at 40% and held that the first respondent / applicant is entitled for payment of compensation. There is nothing wrong in assessing loss of earning capacity at 40%.

18. The appellant / OP.No.2 also took plea that the driver do not possess the valid and effective driving licence at the time of accident. There is only evidence of R.W.1, who is the Assistant Administrative Officer of the appellant/OP No2. As per his evidence, as on the date of the accident i.e. on 25.10.2001, the respondent / applicant possessed light motor vehicle licence (Ex.B.1) and the same was renewed with effect from 10.05.2002 and his driving licence was converted from non-transport to transport on 10.05.2002 after the accident on 25.10.2001. As per Ex.B.1 (Renewed driving licence issued by RTO in original, conversion of transport licence dated 02.01.2004), the proper person to speak about Ex.B.1 is R.T.A. R.W.1 is an Assistant Administrative Officer and he is not a proper person to speak about the driving licence of the first respondent / applicant. The non examination of the R.T.A. is certainly fatal to the contention of the appellant. Even considering that Ex.B.1 is a valid driving

licence as on the date of accident, admittedly, there is no plea in the counter that the accident occurred due to non possession of the driving licence with transport endorsement and batch number. In the absence of such plea and supporting documentary evidence of R.T.A., I am of the considered view that the appellant / OP No.2 failed to establish that the accident was caused due to non possession of light motor vehicle driving licence with endorsement of Transport driving licence and batch number. It is not the case and evidence that the first respondent /applicant is not competent to drive Tata Sumo vehicle as on the date of the accident. The Commissioner, having considered oral and documentary evidence on record, rightly came to the conclusion that the driver is competent to drive Tata Sumo as on the date of the accident.

19. Absolutely, there is no evidence with regard to the income of the first respondent / applicant. The proper person to speak about the income is the second respondent /OP.No.1, who is the owner of the Tata Sumo Vehicle bearing No. AP 22 D 8181. The first respondent/applicant also did not produce any documentary proof that he is receiving a salary of Rs.4,000/- per month. In view of the absence of any such evidence, the Commissioner is perfectly right in assessing the age of the first respondent / applicant as 19 years, basing on the date of birth on the driving licence i.e. 5.5.1982. In the absence of any proof of salary, the Commissioner rightly considered the minimum rate of wages fixed by the Government A.P. in Public Motor Transport Schedule Employment in G.O.Ms.No.30, LET & F

(Lab-II) dated 27.07.2000 and took the basic wage for light motor vehicle drivers is Rs.1,874/- and V.D.A payable as on the date of the accident as notified by the Commissioner of Labour from time to time is Rs.560/- and the total wage amounts to Rs.2,434/- and the same wage is taken as wages for the purpose of calculating the amount of compensation. Accordingly the amount of compensation was calculated as below:

$$\text{Rs. } 2434 \times \frac{60}{100} \times \frac{40}{100} \times 225.22 = \text{Rs. } 1,31,565/-$$

The stamp fee payable on the amount of compensation is Rs.262/- and it was paid earlier by the applicant, before the Commissioner and the same is allowed now. Advocate fee of Rs.500/- is allowed, totaling to Rs.1,32,377/- as compensation and by virtue of Ex.A.5 – Xerox copy of the insurance policy, which is in force by the date of order, the appellant / OP.No.2 and the second respondent / OP No.1 are jointly and severally liable to pay compensation to the first respondent / applicant for the loss of earning capacity suffered by him due to the injuries sustained in an accident that occurred on 25.10.2001, which arose out of and in the course of his employment as a labourer on the insured Tata Sumo vehicle bearing No. A.P. 22 D 8181 in the employment of the second respondent /OP No.2. Both the 1st and 2nd opposite parties are directed to deposit the total amount Rs.1,32,327/- (Rupees one lakh thirty two thousand three hundred and twenty seven only) by way of a demand draft drawn on any Nationalised Bank and drawn in favour of the Commissioner for workmen's Compensation and

Assistant Commissioner of Labour, Mahaboobnagar, within (30) days from the date of receipt of this order, failing which the applicant is entitled for interest 9% per annum on the amount of compensation from the date of filing of the application. Thus the findings of the Tribunal are valid, and do not suffer from any legal infirmities warranting interference with the award.

20. For the foregoing discussion and in the result, the appeal is dismissed, with costs, confirming the Award and decree dated 15.09.2005 passed in W.C. No.32 of 2003 by the learned Commissioner for Workmen's Compensation & Assistant Commissioner, Labour, Mahaboobnagar.

21. The Appellant / Opposite Party No.2 and second respondent / Opposite Party No.1 are directed to deposit the compensation awarded by the Commissioner jointly and severally, if not already paid/deposited, by way of a demand draft drawn on any Nationalized Bank and drawn in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar, within a period of thirty days from the date of receipt of a copy of this Judgment.

22. Miscellaneous petitions pending consideration, if any, in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated : 11.04.2018

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CIVIL MISCELLANEOUS APPEAL No1157 of 2008

Dated 11th April, 2018

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