

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
CIVIL MISCELLANEOUS APPEAL No.974 of 2008

JUDGMENT :

This Civil Miscellaneous Appeal is filed against the orders dated 30th September 2003 in W.C. No. 17/2003, on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad.

2. The appeal is filed by the Insurance Company, which is aggrieved by the impugned order passed in the Lower Court. The case of the applicant in the Lower court is that, he was working as a Driver on an Auto Rikshaw bearing No. AP-11-N-4721. While he was so working, the Auto met with an accident on 22.11.2002. Stating that he sustained injuries, he filed the case against Opposite Party No.1 (OP-1) Opposite Party No.2 (OP-2) and also the Insurance Company (OP3), which has insured the said vehicle.

3. OP-1 choose to remain ex-parte. OP-2 filed a counter, wherein they admitted the employment and also admitted the ownership of the said Auto. However, they pleaded that in view of the valid insurance cover, OP-3 alone is liable to pay the compensation, if any.

4. OP-3 filed a counter, denying the entire case set up by the applicant.

5. The parties went to Trial. On the applicant's side, the workman was examined as AW.1 and the Doctor who treated him was examined as AW.2. Exs.A.1 to A.8 were marked. There is no oral evidence for the respondents. But Ex.B.1 – the Insurance Policy is marked. After considering the oral and documentary evidence, the Lower Court came to a conclusion that the age of the deceased is fifty years and

proceeded to award compensation, assessing the loss of earning capacity as 60%. An amount of Rs.1,45,368/- was awarded. It is this order that is questioned in the appeal.

6. This Court has heard Smt. S.A.V. Ratnam on behalf of the appellant and Smt. Chaya Devi, on behalf of the respondents.

7. The learned counsel for the appellant argued vehemently that the order of the Lower Court is contrary to the evidence and the law on the subject. It is her argument that the Auto Rikshaw was transferred from OP-1 to OP-2. The said transfer was not intimated to OP-3 and that therefore, the appellant Insurance Company is not liable to pay the compensation, as they have no privity of contract with OP-2. She also argued that the assessment of loss of earning capacity is high and that the Tribunal erred in awarding such high compensation. It is also argued that the Tribunal erred in awarding interest in the case.

8. The learned counsel relied upon two judgments of Hon'ble Supreme Court of India; **Oriental Insurance Company Ltd. Vs. Mohd. Nasir & Anr.**¹ and **Firdaus Vs. Oriental Insurance Company Ltd.** in Civil Appeal No.9310/2017 arising from Special Leave Petition No. 24702/2015 in support of her contentions.

9. In reply thereto, the learned counsel for the respondents argued that the order in question is a reasoned order, taking into consideration all the facts. The Commissioner fixed the age of the applicant as 50 years, relied upon the Minimum Wages Act to assess the wages payable and also fixed the loss of earning capacity at 60%, after considering the Doctor's evidence. She also pointed out interest that is

¹ 2009 (4) Supreme 589

awarded in accordance with Section 4(A) of the Workmen's Compensation Act.

10. This Court, on an examination of the facts and circumstances, notices that in the pleadings itself, OP-2 agreed that he is the current owner of the vehicle and that he is also the current employer of the workman. The transfer of the vehicle, on which, such heavy emphasis is laid by the learned counsel for the appellant is not a very material factor, in view of the current status of the law. It has been time and again laid down that the Insurance, is of the vehicle in question and that transfer of the vehicle also ensures the transfer of the insurance.

11. In fact, in Para-13 of the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 9310/2017 / SLP24702/2015 *supra* which was relied upon by the appellant counsel, the Hon'ble Supreme Court reproduced the judgment of Rikhi Ram's case and ultimately held that the transfer of the vehicle is of no consequence as far as the third party and victim is concerned. Compensation that was awarded to the driver by name Parvez Khan was upheld in the case before Hon'ble Supreme Court of India. In Para-16 of this Civil Appeal, the Hon'ble Supreme Court clearly held that despite the transfer of the vehicle; the liability of the insurance company continues. Para 16 of the above judgment read as follows:

“In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No. HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventuality, i.e. whether defendant No.1 was the owner of the vehicle on the date of the accident, or defendant no.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd. Continues and workmen compensation commissioner has rightly fastened the liability on the Insurance Company. The remand made by the High court to find out as to whether Parvez Khan was an employee of the defendant No.1 or not, was unnecessary.”

Therefore, this Court is of the opinion that the alleged transfer of the vehicle is not very material and the liability of OP-3 continues.

12. The 2nd question that was argued strongly was about the Doctor's evidence in the assessment of the loss of earning capacity. The Doctor in this case was examined as A.W.2. He deposed about the Ex.A.4 medical certificate, which was given by him, wherein, he assessed the percentage of disability as 45%. This Doctor also treated the applicant in the period 10.01.2003 to 12.05.2003, as can be seen from the Ex.A.3, prescriptions. He was cross-examined at length. But he deposed that there is a stiffness of right knee joint and ankle joint along with decreased movement of the knee and joint etc. He also deposed that because of the injuries sustained, the applicant will not be able to drive as perfectly as he earlier did. The assessment of disability is 45%. The learned Commissioner in the Lower Court considered the medical evidence and after holding that the age of the applicant is 50 years, he fixed the loss of earning capacity at 60%, by relying upon the wages from the Minimum Wages Act. This Court, on an examination of the entire evidence, including the Doctor's evidence finds that the Commissioner did not blindly adopt what was stated. In fact, the Commissioner came to an independent conclusion on his own. The injuries sustained and persisting will definitely cause the difficulty that is spoken of by the Doctor. Therefore, the assessment of the loss of earning capacity as 60% is neither too high nor unreasonable. If the appellant was dissatisfied with the assessment of the disability or the medical evidence, they should have introduced evidence to contradict the contents of the disability certificate by examining their own expert etc. In the absence of any such contradictory evidence, this Court is of

the opinion that the appellant cannot really question the assessment particular in this case. This court also feels that since what is being awarded is a one time compensation, the assessment of the percentage of loss of earning capacity as 60% is not too high in the circumstances of the case.

13. The last point that survives for consideration is about the interest payable. The learned counsel relied upon the case of Mohd. Nasir 2009 4 SCC 589 and argued that interest should be awarded from the date of the application only and cannot be earlier. She also cited a judgment in Civil Appeal No. 24702 of 2005 in Firdouse Vs. Oriental Insurance, but it is noticed in the Hon'ble Supreme Court itself awarded interest at 12% from the date of the accident in C.A.No.24702/2005. The other judgments of the Hon'ble Supreme Court are very clear, including the judgment in Ved Prakash Garg (AIR 1997 Supreme Court, 3854) wherein it is held clearly that interest is payable from the date of the accident. In the case on hand, the Tribunal awarded interest as per Section 4A of the Workmen's Compensation Act itself, in case of default in deposit only, and this is in accordance with the provisions of the Workmen's Compensation Act. Therefore, this Court is of the opinion that there is no error committed in awarding interest as claimed.

14. For all the above reasons, this Court is of the opinion that the order of the lower Court is correct and there is no error at all. The appeal is therefore, dismissed. There shall be no orders as to costs.

15. The Miscellaneous petitions pending, if any, shall stand closed.

D.V.S.S.SOMAYAJULU,J

Dated: .06.2018

JR

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

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