

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No.474 of 2008

JUDGMENT:

Appellant/respondent No.2, aggrieved by Order dated:07.02.2008 in W.C.No.120 of 2008 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad, (for short, the Commissioner), in awarding an amount of Rs.2,58,023/- as compensation by the respondents 1 and 2 in W.C.120/2008 jointly and severally and they were directed to deposit the total amount by means of a demand draft drawn on any nationalized bank in favour of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad, within thirty days from the date of receipt of the order, failing which the applicant is entitled for interest @ 12% per annum on the amount of compensation from the date of the accident, preferred this Appeal.

2. The contention of the appellant is that the Commissioner granted compensation without properly appreciating oral and documentary evidence on record and also without taking into consideration the delay of 18 days in filing FIR and without filing charge sheet. It is also contended that FIR is only a self styled document, it has no value and further there is no employer and employee relationship between respondent No.1-applicant and respondent No.2-Owner of vehicle.

3. *Per contra*, the learned Counsel for the respondent No.1-claimant contended that the delay in lodging FIR cannot be a ground to the victim. The Commissioner, after marshalling the facts and evidence passed a reasoned order which is legal and valid.

4. Now, the point that arises for determination is:

Whether the order in W.C.No.120 of 2006, dated:7-2-2006 of the Commissioner, suffers from any legal infirmity, warranting interference?

5. The respondent No.1/claimant was examined as AW.1, besides doctor was examined as AW.2. Having disputed the claim, none have been examined on behalf of appellant/respondent No.2. Mainly filed half of the insurance policy which is marked as Ex.B.1 and kept quiet.

6. The respondent No.1/claimant himself was examined as AW.1. The evidence of AW1 is that, he worked as Driver on Minidor Auto bearing No.AP 13 W 6275 which belongs to respondent No.2. While so, on 02-5-2006 at 7.30 pm while he was proceeding as Driver of the auto from Hyderabad to Tandoor and on reaching near Aloor, one unknown vehicle, came in opposite direction and due to lighting focus of the said vehicle, he lost control over the vehicle as a result of which the Auto turned turtle. In the said accident, he sustained injuries, suffered physical disability, lost his earning capacity and he

is unable to do work as was doing earlier. He was removed from employment by the respondent No.2-Owner of vehicle.

7. That, Ex.A.1 is the certified copy of FIR dated:20-5-2006. The complainant Kolanti Kishore Kumar, is none other than son of AW.1. Ex.A2 is the discharge card issued by the Gandhi Hospital, Secunderabad, which supports the evidence of AW.1 and AW.2-doctor wherein he stated that he is working as Orthopaedic Surgeon in King Koti General Hospital, Hyderabad. Admittedly, as per Ex.A1-FIR and also Ex.A9-final result, accident was caused involving unknown vehicle. As clear from the Ex.A.2, AW.1 was admitted in Gandhi Hospital on 03-5-2006 with Closed Fracture Patella Rt. Lower Limb with I.P. No.16415 and he underwent surgery on 15.5.2006 and later discharged from hospital on 19.5.2006. It is clearly mentioned in Ex.A2 that AW.1 met in road traffic accident on 2.5.2006 at Chevella.

8. To substantiate the same, respondent No.2 is owner of the Minidor Auto bearing No.AP 13 W 6275 on which AW1 was appointed as driver by respondent No.2. Ex.A.6 is R.C which establish that the respondent No.1 is the owner of the Auto bearing No.AP 13 W 6275. In Exs.A1 and A2, it is clearly mentioned that AW.1 was working as Driver with Auto bearing No.AP 13 W 6275 and the same is corroborated with the evidence of AW.1; that while on duty he met with accident and admitted in Gandhi Hospital.

Ex.A6 establish that respondent No.2-D. Ravi Kumar is the registered owner of the said Auto on which respondent No.1/ AW.1-claimant is the driver.

9. The Commissioner, considering the oral and documentary evidence of AW.1, Exs.A1 and A2, rightly came to conclusion that respondent No.2-D. Ravi Kumar is the registered owner and AW.1 is the driver of the said Auto bearing No.AP 13 W 6275, met with accident on 02-5-2006 where he sustained injuries and there is relationship between the respondent No.1/claimant and appellant. The accident occurred during the course of employment with respondent No.2.

10. The contention of the appellant/respondent No.2 is that there is a delay in lodging the FIR and charge sheet was not filed. Hence, there is no supporting documentary evidence.

11. *Per contra*, the contention of the respondent-claimant is that, subsequently, charge sheet was filed and it is marked as Ex.A9 and more so, non-filing of charge sheet is not a bar for claiming compensation. In support of his contention, Counsel for respondent-claimant relied upon the decision in **RAVI v. BADRINARAYAN AND OTHERS** in Civil Appeal No.1926 of 2011, dated:18-02-2011, wherein the Apex Court held as under:

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“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant’s case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents C.A. @ S.L.P. (C) No.11978/08.....(contd.)”

12. In the case on hand, as per Exs.A1 and A9 and also the evidence of AW.1, accident occurred on 02-5-2006. Whereas, the same AW.1 presented the claim on 20-5-2006. With regard to the accident occurred on 02-5-2006 at 19.30 hours against column-8 of Ex.A1, the reason for delay is mentioned. The Apex Court in the said decision, the general reasons for lodging the FIR stated that, knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Accordingly, immediately after accident, complainant was shifted to Gandhi Hospital, Secunderabad, for treatment. As per Ex.A2, he was admitted in Hospital on 03-5-2006, underwent surgery on 15.5.2006 and discharged on 19.5.2006. He sustained injuries with Closed Fracture Patella Rt. Lower Limb.

13. During the cross examination, it was stated that, his son lodged complaint before the police fifteen days after accident because of the nature of injuries. Immediately after the accident, AW.1 was shifted to Gandhi Hospital by giving more importance to get him treated rather than to rush to the police station. Therefore, delay in lodging the FIR is not a ground to seek claim. More so, the claimant-AW.1 filed final result and marked it as Ex.A9 in the claim petition itself. Therefore, the delay in lodging FIR cannot be a ground to deny compensation to the victim-AW.1. Accordingly, the Commissioner, having considered the evidence of AW.1 and the documents ie., Exs.A1 and A.9 came to conclusion that delay in lodging FIR should not be a ground to defeat the genuine case for payment of compensation to the injured workman, who sustained injuries in the accident while driving the vehicle. In the result, held that the respondent No.1/ claimant is entitled for compensation.

14. That, with regard to disability, besides the evidence of AW.1, there is also an evidence of AW.2 who issued disability certificate – Ex.A.3. That, according to the evidence of AW.1 and Ex.A.2, respondent No.1/claimant sustained closed fracture patella right– lower pole. The evidence of AW.2 is that, he is an Orthopaedic Surgeon in King Koti General Hospital, Hyderabad and they have issued Ex.A.3 disability certificate to AW.1 on 15-6-2007 after physically examining him and also after going through the old record of the applicant. On examination, observed fracture of patella (R) –

postoperative non-union resulting in painful limb, restriction of knee movements from 20° to 100° only. As a result, doctor assessed disability of 40% as per Mc. Bride's Scale and he also assessed the loss of earning capacity at 100% as driver. Though AW.2 was cross examined at length, could not initiate any favour to the applicant to doubt the disability and loss of earning capacity.

15. During the course of cross-examination, AW.2-doctor admitted that he has not maintained any record pertaining to the disability and denied the suggestion that he is not competent to issue disability certificates and the Medical Board alone is competent. Further denied that the disability certificate and loss of earning capacity are in-correct.

16. The Commissioner, while considering the evidence of AW.1 corroborated AW.2 and Exs.A.2 and A.3 wherein he specifically corroborated with the reasons mentioned in Ex.A.3 that respondent No.1/applicant (AW.1) suffered fracture of patella (R) – postoperative non-union resulting in painful limb, restriction of knee movements from 20° to 100° only. Further, AW.1 was a driver of an auto-rickshaw. Driving of auto-rickshaw is a strenuous work. Besides driving, the applicant has to attend to various other attendant works of the auto, which requires swift movements of both upper and lower limbs, like moving the auto, pushing the auto and all other such things. Therefore, keeping in view of the various attendant job

requirements of stress and strain and keeping in view the physical disability, the Commissioner, assessed the loss of earning capacity at 75%.

17. Admittedly, Ex.B1 is the insurance policy issued by the appellant where under respondent No.2-Owner of vehicle is the insured. Ex.B1-Ex.A.7 policy was in force with effect from 4.6.2005 to 3.6.2006. Whereas, the accident occurred on 2.6.2006. Therefore, Ex.B1/Ex.A.7 was in force as on the date of accident. Absolutely, there is no evidence produced by the appellant showing any willful negligence on the part of AW.1.

18. Further, the contention of the appellant is that, there is difference with regard to Auto number. In Ex.A1, Ex.A.9 and in the evidence of AW.1, clearly stated that the police has written vehicle number as AP W-13/6275 instead of AP 13W 6275. Whereas, in Ex.A.6, registration of auto number is mentioned as AP13W 6275 and the owner is Ravi Kumar who is the respondent No.1. In Ex.A1-complaint, the auto number on which AW.1-driver is asserted as APW13-6275. In Ex.A.9, the auto number is typed as APW-13/6275. The policy under Ex.B.1, the auto number is mentioned as AP13-W-6275. In this regard, the Commissioner, relied on the decision, reported in 2006 ACJ 2517, in the case of Dewakar Shukla and others V. Ashok Thakur and others, the Division Bench of High Court of Madhya Pradesh at Jabalpur where it was held as under:

“Motor Vehicles Act, 1988, section 147 (1) – Motor Insurance-Cover note – Discrepancy in number of the vehicle – Liability of insurance company – Insurance company disputed its liability on the ground that FIR mentions MP 20-E 9907 as number of vehicle where as cover note shows number as MP 20-C 9907 – Vehicle MP 20-C 9907 was seized from the driver and he was charge-sheeted for driving this vehicle – Clerical mistake appears in writing FIR-Whether insurance company is liable – Held : Yes:mistake in wrong mentioning of word ‘E’ instead of ‘C’ in FIR did not affect the merits of the case and it cannot be presumed that offending vehicle was not belonging to the insured.”

19. In the instant case, there is an evidence of AW.1 that he was working as driver on the auto No.AP13W 6275 belonging to the respondent no.2-D. Ravi Kumar (owner of vehicle). Complainant also under Ex.A.1 mentioned the auto number as APW13-6275. In the final result-charge sheet, police mentioned the auto number as APW13/6275 which is a typographical mistake, the same was clarified by AW.1 in the evidence. Typing mistake in mentioning the auto number as AP13W 6275, the said mistake does not affect the claimant or the owner of the auto. Therefore, the Commissioner, having considered the evidence of AW.1, Ex.A1, Ex.A9 and Ex.A6 came to right conclusion that the respondent No.2-D. Ravi Kumar is the owner of the auto bearing No. AP 13W 6275 under which respondent No.1- applicant is auto driver and there is an employee and employer relationship and wrong mentioning of auto number in Ex.A.9 does not affect the claim.

20. Further, with regard to age of the claimant, in the complaint, the age is mentioned as 43 years ie., in Ex.A1 submitted by son of the injurer, mentioned the age as 43 years. In Ex.A.2-discharge card, the

age is mentioned as 45 years. In Ex.A.3-disability certificate dated:15.6.2007, age is mentioned as 46 years. Ex.A4 is the driving licence of AW.1 wherein the date of birth of AW.1 is mentioned as 01-01-1959 and the age is 45 years and accordingly, by the date of accident, the claimant was 45 years. Accordingly, the Commissioner, rightly arrived the age of the applicant as 45 years for the purpose of calculating the amount of compensation.

21. According to the evidence of AW.1 and also Claim Petition, he was earning Rs.4,000/- per month as driver of the auto. The same is disputed by the appellant-respondent No.2. No oral and documentary evidence was produced by the respondent No.1-claimant to prove that he was earning Rs.4,000/- per month. In the absence of any such convincing evidence, the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad, considered the minimum rates of wages fixed by the Government of Andhra Pradesh in employment of Public Motor Transport vide G.O.Ms.No.30, L.E.T & F.(Lab-II) Department, dated:27-7-2000. As per this G.O., light vehicle driver shall get Rs.1874/-. VDA payable was Rs.1510/- at the relevant time. Accordingly, the total wages amount to Rs.3384/- and the same was taken as wages for the purpose of calculating the amount of compensation as per the Act.

22. By applying the same, claimant being 45 years, the relevant factor as per schedule-IV of the Workmen's Compensation Act is 169.44. Thus, by applying the formula, under the Act, compensation comes to Rs.2,58,023/-. The calculation is $\text{Rs.}3384 \times 60 / 100 \times 75 / 100 \times 169.44 = \text{Rs.}2,58,023/-$ and so, it was ordered that the respondent No.1-applicant is entitled for compensation of Rs.2,58,023/-. Accordingly, the Commissioner, awarded compensation of Rs.2,58,023/-. Besides that, also allowed an amount of Rs.516/- towards stamp fee payable by the appellant which was exempted earlier at the request of the applicant and was directed to deposit before the Commissioner and further allowed Advocate fee of Rs.500/-.

23. In the facts and circumstances discussed above, I am of the considered view that non-filing of charge sheet and delay in lodging the FIR as he was admitted in Gandhi hospital, Secunderabad, and he underwent surgery and therefore, his son lodged FIR on 20-5-2006 after eighteen days of the accident, therefore, delay in lodging the FIR cannot be a ground to deny justice to the respondent No.1-applicant. The Commissioner, considering the facts and on appreciation of oral and documentary evidence, came to conclusion that delay is not fatal for granting just compensation. Charge sheet is also filed under Ex.A.9. Hence, there is no force in the contention of the appellant that charge sheet was not filed. As such, there is no supporting document that charge sheet has no legs to stand. The

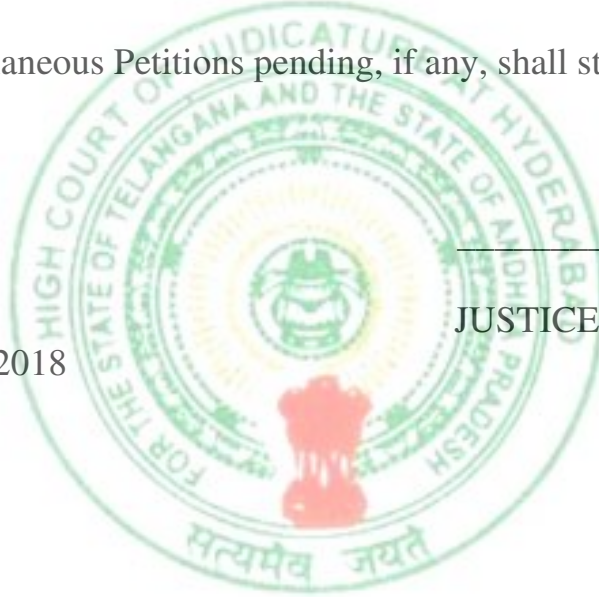
Commissioner, rightly awarded compensation to the claimant and the award is legal, valid and does not suffer from any legal infirmity.

Advocate fee is fixed at Rs.2,000/-

24. In the result, the Civil Miscellaneous Appeal is dismissed with costs while confirming the Order dated:07-02-2008 in W.C.No.120 of 2008 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad.

Miscellaneous Petitions pending, if any, shall stand closed.

Dated:22-03-2018
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