

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.1074 of 2010

AND

CIVIL MISCELLANEOUS APPEAL No.333 of 2021

COMMON JUDGMENT:

These are cross-appeals filed against the order dated 19.10.2010 passed by the Commissioner, Workmen's Compensation, Nizamabad, in W.C.No.117 of 2004, awarding a total compensation of Rs.1,39,351/- for the injuries and the consequential loss of earning capacity suffered in the accident that occurred on 10.07.2003 while the applicant/claimant was discharging his duties as labourer on the lorry bearing No.AAK-2295, proceeding from Nizamabad to Armoor side, and the driver had driven the lorry in a rash and negligent manner near Ramachandrapalli village shivar and dashed the Jeep bearing No.AAJ-1286.

The appellant in CMA No.1074 of 2010 is the claimant, aggrieved by the date of granting of interest, assessment of income and disability for awarding compensation.

The appellant in CMA (SR) No.2471 of 2011 is the New India Assurance Company Limited (for short, 'the insurance company'), raising the question of law as to whether the Commissioner was justified in awarding compensation for labourers when there is no insurance coverage; and whether the authority was justified in coming to a conclusion that the claimant was employed under the owner of the lorry, in the absence of oral or documentary evidence.

Heard the learned Standing Counsel appearing for the insurance company, and the learned counsel appearing for the claimant.

The facts are not in dispute. It may be noted that Ex.A5 is the Salary Certificate produced in support of the claim that the claimant was working as labourer on the lorry bearing No.AAK-2295. Further, Ex.A2-charge sheet would show that the evidence collected by the police established that the claimant was working as labourer on the lorry bearing No.AAK-2295, and the occupation of the claimant was described as labourer on the lorry, and the investigation of the police confirmed the contents of Ex.A1-FIR. Further, nothing contradictory could be elicited in the cross examination of the claimant by the counsel for the insurance company, and further there is no contrary evidence produced by the insurance company to prove that the claimant was not labourer on the lorry at the time of accident.

It is to be noted that as per the judgment of the Hon' ble Supreme Court in **North East Karnataka Road Transport Corporation v. Smt. Sujatha**¹, an appeal under Section 30 of the Workmen's Compensation Act can be heard only on the question of law, and not like a regular appeal under Section 96 of the Code of Civil Procedure which can be heard on both facts and law.

Therefore, whether the claimant was employed and whether the claimant received the salary as claimed and whether the claimant suffered the injuries and disability are all questions of fact which are considered and enquired into by the Commissioner by taking into consideration the evidence available on record, and the findings of facts recorded by the Commissioner cannot be re-adjudicated in an appeal under Section 30 of the Workmen's Compensation Act.

¹ 2018 SCC Online SC 2296 == Civil Appeal No.7470 of 2009

It may further be noted that the issue with regard to the liability of insurance company is no longer *res integra* in view of the judgment of Hon' ble Supreme Court in **National Insurance Company v. Prembai Patel**². Further, as per the judgment of Hon' ble Supreme Court in **Oriental Insurance Company v. Siby George**³, the compensation amount is due and payable from the date of accident. However, the interest on the compensation is liable only from one month after the date of accident till the date of deposit in view of Section 4(A)(3) of Workmen's Compensation Act, 1923.

In that view of the matter, the claimant is entitled to interest at 12% per annum from one month after the date of accident till the date of deposit.

Further, in the instant case, it may be noted that the Commissioner has taken into consideration Ex.A5-salary certificate, Ex.A3-injury certificate and Ex.A4-disability certificate in assessing the income, injuries and consequential disability, and has properly exercised his discretion in assessing the loss of earning capacity for the purpose of calculating compensation, and therefore the same are not required to be interfered with by this Court.

Accordingly, CMA No.1074 of 2010 filed by the claimant is partly allowed; and the CMA (SR) No.2471 of 2011 filed by the insurance company is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

16th July, 2021

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² (2005) 6 SCC 172

³ (2012) 12 SCC 540

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