

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

CIVIL MISCELLANEOUS APPEAL NO.1168 OF 2005

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellant/Opposite Party No.2-insurance company challenging the Award of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-1 in W.C. No.31 of 2003 dt.10.05.2004.

2. Learned counsel for the appellant, Smt. I. Maamu Vani, submitted that the award passed by the Commissioner was against the facts and law. She submitted that though the applicant before the Commissioner for Workmen's Compensation had himself stated that Opposite Party No.1 (employer) used to pay only Rs.2,500/- per month to him as salary, the Commissioner, while computing the compensation, has taken the wages at Rs.2,674/- per month as per the Minimum Wages Act. Therefore, according to her, the Commissioner cannot fix the salary at more than what was actually being paid by the employer. She also submitted that though the disability certificate issued by the Medical Board alone is to be considered, the doctor who treated the applicant had issued a certificate of disability certifying the disability of the applicant as 45% and the Commissioner has taken his disability as 100%. She also submitted that the applicant was not the

driver of the Opposite Party No.1, but had taken the auto on hire, which is also evident from the fact that the applicant's father and his neighbour were travelling in the auto at the time of the accident. Therefore, according to her, the applicant cannot be treated as the employee of the Opposite Party No.1 and therefore, the Commissioner for Workmen's Compensation has erred in granting compensation to the applicant. Thus, she prayed for setting aside of the award.

3. On the other hand, Sri Chandrasekhar Reddy, learned counsel for respondent No.1, i.e., the applicant before the Commissioner submitted that the applicant was employed as a driver by the Opposite Party No.1 and was in his employment for more than a year, which has been admitted by the Opposite Party No.1 in his evidence; that the applicant was receiving Rs.4,000/- per month as salary and that the Commissioner has only taken the salary as per the Minimum Wages Act. Therefore, according to him, the award needs no interference. He also submitted that the applicant being an auto driver, the disability percentage of his right hand is 45%, but loss of his earning capacity is 100% and therefore, the Commissioner has rightly awarded the compensation.

4. Having regard to the rival contentions and the material placed on record, this Court finds that the applicant was driving the vehicle at the time of accident. The question is whether he was driving in the capacity of driver of Opposite Party No.1 or as hirer of the vehicle and

was receiving compensation as salary. The Opposite Party No.1 in evidence, confirmed that the applicant was working with him as a driver and this evidence has not been rebutted by the appellant herein. It is also not disputed that a passenger was travelling with him on the date of the accident and the passenger had died in the accident. It is also not in dispute that the applicant's father was also in the auto and had also succumbed to injuries from the accident. Merely because the applicant's father was in the auto at the time of the accident and the passenger was his neighbour, it cannot be denied that the applicant was the driver of the auto at the time of the accident and that he also had received certain injuries and was treated in the hospital. Therefore, the employer and employee relationship between the Opposite Party No.1 and the applicant is proved.

5. The next point to be considered is whether the auto involved in the accident was insured and the policy was in force.

6. It has been recorded by the Commissioner that the auto was insured and the insurance policy was in force during the said period. Therefore, the claim against the insurance company is maintainable.

7. The third point to be considered is the quantum of wages of the applicant at the time of the accident.

8. Though the applicant has stated that he was being paid Rs.4,000/- per month as wages, the employer-Opposite Party No.1

had stated that he was paying Rs.2,500/- per month. The Commissioner has taken the wages as prescribed under the Minimum Wages Act to arrive at a figure of Rs.2,674/-.

9. This Court finds that in the absence of any evidence of the wages paid to the applicant, the Commissioner was constrained to adopt the wages as prescribed under the Minimum Wages Act. Therefore, this Court finds no reason to take any other view.

10. As regards the disability percentage of the applicant, this Court finds that no such ground has been raised in the memorandum of grounds and the learned counsel has only raised an oral argument on this issue. This Court finds that the doctor who treated the applicant was experienced in the field of Orthopaedics and has stated that the disability percentage of the applicant is up to 45% and his loss of earning capacity as a driver is 100%. However, the Commissioner has adopted 60% as the disability percentage, which is reasonable, and has applied 100% as loss of earning capacity. This is restricted to 60%. Therefore, this Court modifies the award accordingly.

11. The CMA is accordingly disposed of. No order as to costs.

12. Pending miscellaneous petitions, if any, in this CMA shall also stand dismissed.

JUSTICE P. MADHAVI DEVI

Dt.08.11.2021

Svv