

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE**

PRESENT

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL NO: 61 OF 2014

Appeal under Section 30 of W.C. Act against the Order made in W.C.No.161 of 2007, dated 08.07.2010 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I at Hyderabad.

Between:

The National Insurance Company Limited, Rep. by its Divisional Manager, Chenoy Trade Centre, Secunderabad.

...APPELLANT

AND

1. V. Pentaiah, S/o Ramaiah, aged 48 years, Occ: Ex Driver, R/o Vinayaknagar, Malkajgiri, Hyderabad.
2. D.Prabhakar Reddy, R/o H.No.6-187/A, HMT Road, Chintal, Hyderabad.
3. B. Kishan, S/o Hanuman R/o H.No.2-143 Fathenagar, Balanagar, Hyderabad.

...RESPONDENTS

Counsel for the Appellant: SRI. V. VENKATARAMI REDDY

Counsel for the Respondent No.1: SRI. S. SUDARSHAN REDDY

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.61 of 2014

ORDER:

Heard the learned counsel for appellant, and the learned counsel for respondent.

This is an appeal by the insurance company. The following three contentions have been raised before this Court challenging the impugned order passed by the competent authority under the Workmens Compensation Act.

(i) that there is no employer-employee relationship and as a matter of fact the claimant himself admitted in his cross examination that there was no document to prove that he was working on the vehicle at the given point of time.

(ii) that respondent No.3 claims to have been transferee of the ownership of the vehicle, whereas there is no transfer effected as on the date of accident.

(iii) that against 35% loss of earning capacity as certified by the Doctor, the competent authority has taken the loss of earning capacity as 50% and without there being any proof regarding employment as driver, excess compensation has been fixed.

Learned counsel for the appellant copiously takes this Court through the evidence and submits that this Court does not justify granting of excess compensation and prays for setting aside the impugned order dated 07.07.2010.

On the other hand, the appeal is resisted by the learned counsel for the respondent.

Having regard to the respective submissions, and on perusal of the material placed before this Court, there is no dispute that the accident occurred on 12.03.2006. The claimant examined himself as AW.1. He filed affidavit in lieu of Chief Examination and offered himself for cross-examination. In his deposition, he narrated about the incident and deposed with respect to the injuries sustained in the accident, that he fractured both bones and left leg and has taken treatment for one month as in-patient in Gandhi Hospital. He filed Ex.A3-Certified Copy of accident register, Ex.A4-Discharge card issued by Gandhi hospital, Ex.A5-Disability Certificate Issued by AW.2, Ex.A7-X-ray report, Ex.A8-X-ray films.

In that portion of cross examination which is brought to the notice of this Court, it is true that the appellant had accepted that he has not filed any document in the Court to prove that he was working on the vehicle for the past two years as driver on the Lorry bearing No.AP-9U-8088, this Court can take judicial notice of the fact that individual vehicle owners do not give any Appointment Order and the driver is employed more on trust or usually known individuals. In that view of the matter, non-filing of documentary proof by the applicant with regard to his employment status as driver cannot be put against the claimant, more particularly, in the facts of the case where the claimant has placed the driving licence and further the involvement in the accident is evidenced by Ex.A1-Certified Copy of FIR, Ex.A2-Certified copy of Charge sheet, Ex.A3-Certified Copy of accident register.

There is no dispute that the vehicle was insured with the appellant-insurance company. In the facts of the present case, it cannot be said that the claimant has not established the relationship of employer and employee. Accordingly, the said contention is rejected.

Coming to the second matter relied upon by the respondent, Section 167 of the Motor Vehicles Act takes care of the same. It may be borne in mind that what has been insured by the insurer is the vehicle and there is no dispute there is coverage for the said vehicle.

In that view of the matter, even assuming for the sake of argument that respondent No.3 was wrongly added as party in spite of there being no transfer effected in his name, the factum that respondent No.3 has not become ostensible owner of the vehicle is not brought by the insurer. In that view of the matter, it does not make difference as to respondent No.3 not being regarded the owner of the vehicle.

Insofar as the argument of excess compensation has been granted, the facts disclose otherwise. The disability determined by AW.2, Orthopaedic Surgeon, he estimated physical disability of 35% and resulting in partial and permanent as per Kessler's Guidelines with loss of earning capacity 60% and further the injury is assumed to be grievous in nature. In spite of the same, the competent authority has taken into consideration of the evidence before it granted compensation for only loss of earning capacity of the claimant as 50%.

In those circumstances, the contention of the insurance company that excess compensation has been granted is not borne out of record.

Accordingly, the appeal deserves to be dismissed. However, the interest at 12% per annum on the amount of compensation was granted from the date of accident, whereas in terms of Section 4A(3) of the Workmen's Compensation Act, and in terms of the judgment of the Hon'ble Supreme Court in **Pratap Narain Singh Deo v. Srinivas Sabata**¹ the interest is liable to be paid from one month after the date of accident and not from the date of accident.

Accordingly, the appeal is partly allowed by modifying the impugned order with regard to date of payment of interest. No costs. Miscellaneous petitions, if any pending, shall stand closed.

¹ (1976) 1 SCC 289

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SD/- B.S. CHIRANJEEVI
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Commissioner Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad, (with records)
2. One CC to Sri. V. Venkatarami Reddy, Advocate [OPUC]
3. One CC to Sri. S. Sudarshan Reddy, Advocate [OPUC]
4. Two CD Copies

ghr

HVR

HIGH COURT

DATED:11/02/2021



JUDGMENT

CMA.No.61 of 2014

ALLOWING THE CMA IN PART
NO COSTS

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8/3/21
JW