

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

**TUESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND TWENTY ONE**

**PRESENT
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

C.M.A. NO: 139 OF 2021

Appeal under Section 30 of W.C.Act, against the Order/ decree in W.C.No.8 of 2001 (NF) dated 27/07/2007 on the file of the Court of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, FAC, Nizamabad.

Between:

G.Nagesh Kumar, S/o.Narsappa, Occ: Labourer on Lorry No.ATJ 4127, R/o.H.No.10-12-1102, Gajjulpet, Nizamabad.

...PETITIONER/APPELLANT

AND

1. A.Dasarath Reddy, S/o.Chinnareddy (DIED), LR R3 Occ: Owner of Lorry bearing No.ATJ 4127 R/o.H.No.1-4, Thadpakal Village, Morthad Mandal, Nizamabad District.
2. The Oriental Insurance Co. Ltd., Rep. by its Branch Manager, Branch Office, at Pratap Reddy Complex, Beside, Hotel Mayura, P.B. No.314, Godown Road, Nizamabad.
3. Smt. Aleti Divya, W/o. A. Dasarath, aged about 50 years, Occ Household, R/o.H.No.1-4, Thadpakal Village, Morthad Mandal, Nizamabad District.
(R3 brought on record as LR of the deceased R1 vide C.O. Dt.09.03.2021 in CMAMP No.444 of 2013 in CMA No.139 of 2021)

...RESPONDENTS/RESPONDENTS

For the Appellant : SRI AZAR SRAVAN KUMAR, Advocate

For the Respondents : NO ONE APPEARED

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL MISCELLANEOUS APPEAL No.139 of 2021

JUDGMENT:

This appeal is filed against the order dated 27.07.2007 passed by the Commissioner, Workmen's Compensation, in W.C.Case No.8/2001 (NF). The appellant herein is the Claimant before the Commissioner.

The appellant/claimant filed the claim petition before the Commissioner seeking compensation for the injuries suffered by him in an accident that occurred on 01.03.1999 at Madhavanagar Village, Nizamabad Mandal and District. The Commissioner, after considering the evidence adduced, and after considering that the crime vehicle i.e., Lorry bearing No.ATJ 4127, was insured with the 2nd respondent-insurance company, and considering that the appellant sustained the injury in the course of his employment as a labourer on the lorry of the 1st respondent, awarded a compensation of Rs.1,18,773/- holding the 1st respondent (owner of lorry) and the 2nd respondent (insurance company) jointly and severally liable to pay the compensation.

Aggrieved by the Commissioner not taking into consideration the wages of the appellant as Rs.3,500/- per month, and also not taking into consideration the loss of earning capacity of the appellant as 70%, and also not awarding interest at 24% per annum on the total claim, the Claimant filed the present appeal.

Heard the learned counsel for the appellant/claimant. Though notice was served, there is no appearance filed on behalf of the respondent insurance company.

Learned counsel for the appellant vehemently contends that the compensation awarded is too low, and the Commissioner having found

that the appellant is a labourer discharging various functions, instead of taking the wages of the appellant as Rs.3,500/- per month has only taken Rs.1,800/- per month; and further as against the 75% partial disability certified by the Doctor under Ex.A4, the commissioner had taken only 50% as the loss of earning capacity, and the same requires to be corrected. Learned counsel would also submit that interest has not been granted as per the Act and thus prays for modification of the order.

Having considered the submission made by the learned counsel for the appellant, and having perused the record, this Court does not find any reason to differ with any of the findings with respect to either the loss of earning capacity, or with respect to minimum wages taken for the purpose of computation of compensation, which is essentially a question of fact. The Commissioner had taken into consideration various aspects, including the nature of injury as evidenced by Ex.B9. In that view of the matter, no modification is required to be made either to the quantum of compensation or with respect to any of the findings recorded by the Commissioner.

However, the appellant is entitled to interest at 12% per annum on the compensation awarded in view of the judgment of Hon'ble Supreme Court in **Oriental Insurance Company v. Siby George**¹, wherein finality was given with respect to the issue that compensation amount falls due and payable as on the date of accident. This was in line with the judgment of Supreme Court in **Pratap Narain Singh Deo v. Srinivas Sabata**².

My learned brother Justice A. Rajasheker Reddy had elaborately considered all the judgments cited by both the appellants as well as respondents in C.M.A.No.871 of 2015, including the liability of insurance

¹ (2012) 12 SCC 540

² (1976) 1 SCC 289

company in cases where the appeal against the owner stood dismissed and the owner having not been made a party respondent. My learned brother by referring to the judgment of Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma³**, had held that the appellant/claimant is entitled to interest at 12% per annum from the date of accident till the date of realisation. The judgment of Division Bench being binding on this Court, and this Court finds no reason to differ with the rationale in **Meka Chakra**. Though the compensation amount is due on the date of accident, the liability to pay interest arises only after one month from the date of accident. This is on account of Section 4A(3) of the Workmens Compensation Act, 1923.

Accordingly, the appeal is partly allowed. It is made clear that wherever the compensation amount has been deposited in pursuance of the orders of Commissioner, the interest at 12% per annum shall become payable from one month of the date of accident till the date of deposit. No costs. Miscellaneous applications, if any pending, shall also stand closed.

³ 2001 (1) ALD 453

//TRUE COPY//

Sd/-K.SREENIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To

1. The Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, FAC, Nizamabad, Nizamabad District.
2. One CC to Sri Azar Sravan Kumar, Advocate (OPUC)
3. Two CD Copies

KJ.

HIGH COURT

DATED:23/03/2021

JUDGMENT

CMA.No.139 of 2021



PARTLY ALLOWED CMA.

ATM (19)
28/4/2021