

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**MONDAY, THE TWELFTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL MISCELLANEOUS APPEAL NO: 177 OF 2019

Appeal under Section 30 of W.C Act against the aggrieved at the order Dt. 09.01.2019, in EC.No.40 of 2012, on the file of the Commissioner for Employees Compensation and Assistant Commissioner of Labour-II, T.Anjaiah Karmika- Sankshema Bhavana, RTC X Road, Hyderabad.

Between

United India Insurance Co.Ltd., Rep by its. Legal Manager, Church Building,
Possnett Bhava, II Floor, Tilaknagar, Hyderabad-001

...APPELLANT/OPP-2

AND

1. Mohd.Hyder, S/o.Chaman Khan, Age 23 years, Occ: ex-labourer, R/o-H.No.14-1-100/3B- Allapur Borabanda, Balanagar, Sanathnagzir, R.R.District, presently r/o.H.No.11-5-450, Chilkalguda, Secunderabad.
2. Shaik Dawood Buddu, S/o.Abdul Rahman, R/o.H.No.8-3-228/678/1511/a, Sriramnagar, Yousufguda, Hyderabad-038.

...RESPONDENTS/APPLICANT

Counsel for the Appellant : SRI. M SATISH REDDY

Counsel for the Respondent No.1: SRI C MOHAN PRAKASH

Counsel for the Respondent No.2 : NONE APPEARED

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.177 of 2019

JUDGMENT:

The United India Insurance Company Limited which was shown as 2nd opposite party in E.C.No.40 of 2015 on the file of Commissioner for Employees Compensation and Deputy Commissioner of Labour – II is appellant in the present appeal. Being aggrieved by the order dated 09-01-2019 passed by the said learned Commissioner, the appellant has filed this appeal against the claimant and his employer.

2. The above stated Employees Compensation case was filed by one Mohd. Hyder, the 1st respondent in the appeal sought for a sum of Rs.6,00,000/- as compensation on the ground of injuries caused to him in an accident dated 28-02-2015. According to the averments made in the said case, it shows that the respondent No.1 herein has claimed that he worked as labourer on a DCM Van vehicle bearing No.AP 29TA 1721 which belongs to the respondent No.2 herein. On 28-02-2015, he worked as labourer on the said vehicle and as per instructions of the respondent No.2/1st opposite party, he was proceeding from Moosapet to Lingampally and the van reached Remedy Hospital, KPHB Colony at about 11.50 a.m., At that time, driver of another car

bearing No.AP 28DH 5111 which was proceeding ahead of the said van applied sudden breaks and a lorry was just behind the said car and driver of lorry also applied sudden breaks and as these two vehicles were ahead of the DCM van, it dashed the lorry. In view of this accident, the respondent No.1/claimant received grievous injuries. Respondent No.1 has claimed that he received fracture of left leg knee and other blunt injuries all over the body. He was shifted to Remedy Hospital from which he was taken to Gandhi Hospital for better treatment. Respondent No.1 having claimed that he was receiving wages @ Rs.6,000/- per month apart from daily batha of Rs.100/-, he sought for a sum of Rs.6,00,000/- as compensation for the above injuries.

3. Both the opposite parties i.e., owner of the vehicle, insurance company which is appellant in the present appeal made their appearance before the learned Commissioner and filed their respective counters. Respondent No.2/1st opposite party admitted the averments made in the claim petition but claimed that he need not pay any compensation as he has obtained insurance policy from the appellant herein for the said DCM van.

4. The appellant has denied and disputed all the averments made in the application and sought for dismissal of the petition. The learned Commissioner framed four (4) issues.

During enquiry, respondent No.1 himself was examined as AW.1 and he has examined Dr. G.Subhash Rao as AW.2 and marked Exs.A1 to A12. The Assistant Manager of the appellant herein was examined as RW.1 and Ex.B1 i.e., True copy of the insurance policy issued against the above said DCM van was marked as Ex.B1. Respondent No.2/1st opposite party did not adduce any oral or documentary evidence. The learned Commissioner considered the oral and documentary evidence placed before him, allowed the application, awarded Rs.5,34,633/- as compensation with interest @ 12% per annum.

5. The present appeal is filed by the appellant on the ground that the learned Commissioner committed an error holding that the appellant herein is liable to pay compensation to the 1st respondent. According to the appellant, there was no evidence to believe that the accident occurred in the course of employment of respondent Nos.1 and 2. There was no proof that he was working as driver on the DCM van. The appellant disputed the wages of the 1st respondent and also disputed the calculations arrived at by the learned Commissioner for awarding compensation to the 1st respondent. The appellant has pleaded that the learned Commissioner failed to see that 55% of the disability assessed by the Medical Officer will not amount to 80% loss of earning

capacity. There was no proof about the employment of respondent No.1. The rate of interest awarded by the learned Commissioner is high, thereby, sought for setting aside the award.

6. Heard both parties.

7. Now the following points arose for consideration are :

1. Whether the 1st respondent worked as labourer on the van of 2nd respondent, thereby, he is entitled to claim compensation?
2. Whether the learned Commissioner arrived at wrong conclusion by awarding compensation on the ground that the 1st respondent suffered 80% of loss of earning capacity?
3. Whether the rate of interest awarded by the learned Commissioner is high?
4. Whether the order by which the learned Commissioner awarded compensation is liable to be set aside?

8. The respondent No.2, who is shown as 1st opposite party and owner of the DCM van did not dispute the averments made by the 1st respondent in his application seeking compensation from both the opposite parties. In fact in the counter filed by respondent No.2, there is an admission about the employment of the 1st respondent and also about the earnings alleged by the 1st respondent. The appellant herein could not produce any proof or evidence to show that there was collusion between respondents No.1 and 2 resulting in filing an application for compensation. The evidence of RW.1 may not show that there

was no such employment of respondent No.1 with the respondent No.2 herein.

9. The respondent No.1 in addition to his oral evidence about the accident produced Exs.A1 to A12 which includes certified copy of First Information Report which was registered soon after the accident, medical record which shows the respondent No.1 received injuries, he was admitted to Remedy Hospital and Gandhi Hospital, and he was under the treatment of AW.2. AW.2 was examined to prove the injuries caused to him. As per the evidence of AW.2, he has examined respondent No.1 herein. It is true AW.2 did not treat the respondent No.1 but his evidence is based on the physical examination and also the medical record, discharge summary. AW.2 deposed before the learned Commissioner that he found fracture of both bones left leg L/3rd, fracture of bilateral inferior pubic rami pelvis for which he was operated by interlocking nail for tibia and fibula at Gandhi Hospital, Secunderabad. AW.2 further stated that due to the accident, the respondent No.1 developed stiffness of left knee with range of movements from 0 to 80 degrees and limping and that the bones were infected with discharge of sinus, thereby, the respondent No.1 cannot sit and squat and cannot attend heavy work. Thereby, he assessed the

pain as partial and permanent disability at 55% which will result loss of earning capacity @ 80%.

10. The learned counsel for the appellant has submitted that the evidence of AW.2 cannot be considered on the ground that he did not treat the respondent No.1 herein. However, as per the evidence placed before the Court shows that AW.2 having physically examined the respondent No.1, having verified the X-Ray, came to the above said conclusion. In view of the categorical evidence that AW.1 suffered fracture due to which he was unable to sit and squat as he could do prior to the accident, the learned Commissioner rightly concluded that the loss of earning capacity as 80%. The learned Commissioner having considered oral and documentary evidence and having considered the evidence and rulings placed before him, he came to the conclusion that it is established that the evidence of AW.1 and AW.2 proved the injuries caused to AW.1 and it is proved that the claimant being a labourer cannot attend labour work with the same efficiency with which he was working, prior to the accident and assessed the loss of earning capacity as 70%. Having come to the said conclusion, he has passed order fixing liability on owner of the vehicle and insurer of the vehicle. Thereby, there is no infirmity in the order and as such, the appeal is liable to be dismissed.

11. In the result, Civil Miscellaneous Appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed.

There shall be no order as to costs.

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Commissioner for Employees Compensation and Assistant Commissioner of Labour-II, T.Anjaiah Karmika- Sankshema Bhavana, RTC X Road, Hyderabad. (with records)
2. One CC to SRI. M SATISH REDDY, Advocate. [OPUC]
3. One CC to SRI. C MOHAN PRAKASH, Advocate. [OPUC]
4. Two CD Copies
5. One Spare Copy

SB

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HIGH COURT

DATED:12/09/2022

JUDGMENT

CMA.No.177 of 2019



DISMISSING THE CMA WITHOUT COSTS

⑦

RM

21/1/23