

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

C.M.A.No.670 of 2010

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the appellant/applicant assailing the order dated 22.06.2010 in W.C.No.2 of 2001 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Sangareddy (hereinafter referred to as 'Tribunal below'), wherein the application filed by him under Workmen's Compensation Act, 1923 (for short 'the Act') against the opposite party Nos.1 & 2 claiming compensation of Rs.2,50,000/- was dismissed.

2. Assailing the orders impugned, the applicant has filed this C.M.A. under Section 30 of the Act with the following substantial questions of law:

- i) Whether a renewal of driving licence after suffering disability disentitles the applicant from claiming any compensation? And

- ii) Whether there is any presumption under law that the applicant does not suffer from any disability if the driving licence is renewed after having suffered disability?

3. Heard learned counsel for the appellant/applicant and respondents. The detailed submissions made on either side have received due consideration of this Court.

4. In the application filed by the applicant before the Tribunal below, after issuing notice to both the parties, the learned Commissioner recorded the evidence of appellant/applicant and another independent witness as PWs.1 & 2 and Exs.A.1 to A.10 documents were marked. In the cross-examination, Exs.B.1-insurance policy was also marked. The opposite party No.1 failed to appear before the Tribunal below and not filed any counter, whereas opposite party No.2 has filed a detailed counter denying the liability, employer and employee relationship, occurrence of the accident, alleging that the applicant has

filed the application in collusion with the opposite party No.1 and the validity of driving licence is also questioned.

5. During enquiry before the Tribunal below, as stated supra, the applicant himself got examined as PW.1 and the Doctor is examined as PW.2 who certified the disability. Though opposite party No.2/insurance company has cross-examined PWs.1 & 2 at length nothing worth mentioning is elicited to discredit their evidence. Be it stated that no authorized officer is examined on behalf of opposite party No.2 in support of their plea as per the counter averments. This by itself is sufficient to draw an adverse inference under Section 114 (g) of the Indian Evidence Act, 1872 holding that the defence set up by the opposite party No.2 is not correct. To arrive at a conclusion, I am supported by the principles laid by the Hon'ble Supreme Court of India in ***Vidhyadhar Vs. Manikrao and another***¹.

¹ AIR 1999 SC 1441

6. Coming to the evidence of PW.1, he is the injured applicant. In his evidence, he has testified that he is holding heavy goods vehicle and light motor vehicle driving licence and that during the relevant period he was working as driver of the vehicle bearing No.AP-28-U-1028 belonging to opposite party No.1 and that on 17.01.1999 in the limits of Katkole Police Station, a bus belonging to KSRTC dashed his lorry, thereby he sustained injury. He was initially admitted in the hospital at Ballari. Thereafter, he was shifted to Hyderabad, admitted as in-patient in NIMs, Hyderabad from 22.01.1999 to 29.01.1999 and steel rods were inserted and due to paucity of money, he was again shifted to Gandhi Hospital. He was given treatment as in-patient from 23.03.1999 to 27.03.1999. He has deposed about police registering the crime and FIR, scene of offence panchanama, charge sheet, injury certificate, discharge summary, photocopy of driving licence as in Exs.A.1 to A.6. Ex.A.10 is the certificate issued by PW.2 with a disability of 40% permanent partial and he has sustained 100% loss of earning capacity.

7. PW.2 is the Doctor, testified that he has examined the applicant clinically and radiologically. There was a mal-united fracture of both bones (Tibia and Fibula) of right leg, there is shortening of right lower limb about 1½ inch, there is deformity of right leg, limited movements of right knee joint and that there is difficulty in squatting and limping gait. Though this witness is cross-examined on behalf of opposite party, nothing worth mentioning is elicited.

8. On overall consideration of the entire evidence, the Tribunal below held that opposite party Nos.1 & 2 are jointly and severally liable for payment of compensation to the applicant. The Tribunal below also assessed the monthly wages of the applicant based on G.O.Ms.No.58 WDCW & L (Lab-II), dated 08.04.1991 and arrived at Rs.2,296/- per month. The Tribunal also concluded that though 40% permanent partial disability is mentioned in Ex.A.10 pertaining to right leg, the applicant has suffered 100% loss of earning capacity. However, the Tribunal below has taken a different view, in view of the renewal of Ex.A.6-driving licence holding that as the applicant got his driving

licence renewed, it cannot be said that he is suffering from disability and on that ground alone, the case of the applicant was rejected.

9. The learned counsel for the appellant/applicant strenuously contends that the applicant is a rustic villager, uneducated person and he is a driver and in the normal course the driving licence was renewed and that by itself does not disentitle the applicant from claiming the compensation absolving the opposite parties from its liability to pay the compensation. The Tribunal below ought to have considered the available evidence on record without looking into the renewal of Ex.A.6-driving licence and awarded the compensation and relied on the principles laid in the following decisions:

- i) ***N. Sree Ramulu @ Sree Rama Murthy Vs. B. Lakshmi Narayana and another***²;
- ii) ***United India Insurance Company Limited, Secunderabad Vs. S.K. Razak and another***³;
and
- iii) ***Golla Rajanna etc., etc. Vs. The Divisional Manager and another, etc., etc.***⁴

² 2013 (5) ALD 249

³ 2015 (4) ald 291

⁴ 2017 (2) ALD 14 (SC)

10. In the case of **N. Sree Ramulu's** case (1st supra), a learned single Judge of this Court as culled out the guiding principles from the decisions of Hon'ble Supreme Court and High Courts for awarding compensation in the applications filed under Workmen's Compensation Act, 1923.

11. In **S.K. Razak's** case (2nd supra), another learned single Judge of this Court while dealing with the principles for assessing permanent partial disablement and loss of earning capacity held that in order to be entitled for 100% of loss of earning, it is necessary for the claimant to prove that he was not only disabled to drive, but also to perform any other work which he was capable of performing at the time of accident.

12. In **Golla Rajanna's** case (3rd supra), the Apex Court held that the finding of Commissioner for Workmen's Compensation on the nature of injury and percentage of disability is purely a question of fact and the High Court cannot reduce the compensation awarded by reappreciating the evidence recording its own finding on percentage of the disability and accordingly considering the

principles laid under Section 30 of the Act, the order of the High Court was set aside holding that under the scheme of the Act, the Commissioner for Workmen's Compensation is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. The whole exercise made by the High Court in re-appreciating the evidence recording its own findings that percentage of disability has no basis and it is not within the competence of High Court under Section 30 of the Act.

13. Reverting back to the facts of the case on hand, be it stated that though the Commissioner on facts concluded that the employee and employer relationship subsists between the applicant and opposite party No.1 and also held that both the opposite party Nos.1 & 2 are jointly and severally liable to pay the compensation to the applicant under the provisions of the Act and also determined the wages of the applicant as Rs.2,296/- against the claim of the applicant at Rs.3,100/- per month. However, only in view of renewal of the driving licence of

the applicant, the claim made by him was negated by the Tribunal. But, there is no legal basis for rejection of such claim made by the applicant merely because of renewal of driving licence, more so in view of the explanation offered by the applicant as PW.1 that he was holding valid driving licence and on expiry of the same automatically it is renewed without his physical examination.

14. In this context, I may refer to the evidence of PW.2-Doctor explained the disability of the applicant stating that on clinical and radiological examination there is mal-united fracture of both bones of right leg, there is shortening of right lower limb, there is deformity of right leg, limited movements of right knee joint and there is difficulty in squatting and limping gait and accordingly based on the oral and documentary evidence, the learned Commissioner has also arrived at a conclusion that the applicant has sustained 40% partial and permanent disability and 100% of loss of earning capacity, as the applicant cannot attend any work as lorry driver as he was attending prior to the accident. Therefore, in such facts

and circumstances, the mere renewal of driving licence has no bearing on the facts of the case, since such renewal will be made automatically without physical examination by the authorities concerned. As such, there is infirmity in the conclusions arrived by the learned Commissioner on this aspect and undue importance was given for such renewal of driving licence of the appellant.

15. Therefore, while relying on the principles laid in the above decisions and also in view of the conclusions arrived at by the Tribunal below, considering the wages of the applicant, permanent partial disability and loss of earning capacity, both the substantial questions of law are answered in favour of the applicant and against the opposite party Nos.1 & 2.

16. In the result, the Civil Miscellaneous Appeal is allowed as prayed for, setting aside the judgment dated 22.06.2010 in WC No.2 of 2001 only to the extent indicated above in not awarding compensation while confirming all other aspects. The compensation shall be assessed as per the relevant factor in the schedule and paid to the

applicant on the basis of his loss of earning capacity as concluded by the learned Commissioner in the orders impugned. The learned Commissioner for Workmen's Compensation, Sangareddy, shall assess and pay the compensation accordingly directing both the opposite party Nos.1 and 2 jointly and severally to pay the same with interest, within one month from the date of receiving the copy of the order. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous Applications, if any pending in this appeal, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 25.11.2022
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