

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.332 of 2022

AND

C.M.A.NO.334 OF 2022

COMMON JUDGMENT :

There are two Civil Miscellaneous Appeals before this Court vide C.M.A.No.332 of 2022 and C.M.A.No.334 of 2022. C.M.A.No.332 of 2022 has been filed by SBI General Insurance Company Limited, whereas, the next C.M.A. was filed by one S.Laxmaiah. Both the appeals are filed being aggrieved by the order of Commissioner for Employees Compensation and Deputy Commissioner of Labour – I at Hyderabad in E.C.No.246 of 2016 whereunder, the learned Commissioner awarded an amount of Rs.3,22,097/- as compensation in favour of said Laxmaiah on account of a road accident.

2. The Insurance Company which is shown as second opposite party in E.C.No.246 of 2016 filed appeal vide C.M.A.No.332 of 2022 on the ground that the learned Commissioner committed an error by awarding compensation without any grounds whereas, the claimant Laxmaiah filed the next appeal on the ground that no adequate amount was awarded as compensation. Since both the appeals are filed against the

same order and as the learned counsel for the appellants in the above appeals advanced common arguments, a common Judgment would suffice to dispose both the appeals.

3. Before discussing the merits and arguments of the appellants in the above appeals, it would be convenient and required to see what was the case before the learned Commissioner in E.C.No.246 of 2016. S. Laxmaiah (herein after will be referred as applicant) filed the said compensation case against the two respondents on the ground that he was working as driver on Eicher truck bearing No.AP 28TD 3455 under the employment of Sri Veerabhadra Swamy Trading Company represented by G.Raghu (herein after will be referred as first opposite party) and SBI General Insurance Company (herein after will be referred as second opposite party) and sought for a sum of Rs.10,00,000/- towards compensation on account of the accident in which he received injuries.

4. According to his application before the learned Commissioner, it was his case that on 04-09-2016, he was on duty as driver on the above said truck and as per the instructions of his employer, he was proceeding from Shankerpally to Gandhi Nagar with a load of ultra tech cement. He reached V.N.R.College,

Bachupally at about 8.00 a.m., and in the meanwhile, driver of lorry bearing No.AP 31V 1246 drove his lorry in a rash and negligent manner and dashed the truck. Therefore, the applicant and cleaner of the truck sustained injuries. The applicant received fracture of right ankle apart from other grievous injuries all over the body and he was admitted to Mallareddy Narayana hospital, Suraram, where he has undergone treatment and incurred an expenditure of Rs.1,00,000/-. The applicant has claimed that he received injuries in the accident that occurred during the course of and out of his employment as driver of the first opposite party. A policy was obtained from the second opposite party against the vehicle which was in force as on the date of accident thereby, he prayed for compensation from both the opposite parties.

5. The first opposite party did not appear before the learned Commissioner, thereby, he was set *ex parte*. The second opposite party (appellant herein) contested the case by filing counter and disputed all the petition averments. The second opposite party has claimed that the accident occurred due to the rash and negligent driving of lorry driver. Therefore, the applicant ought to have filed a petition for compensation against the owner and insurer of the lorry. In the additional counter filed by the

second opposite party, the insurance company has claimed that subsequent to the accident, the applicant who said to have received permanent disability got his license renewed, thereby, it shows that he did not suffer any disability on account of the injuries. Therefore, he is not entitled to any compensation.

6. In view of the above rival claims, the learned Commissioner has framed four issues. During the enquiry, the injured/applicant was examined as AW.1. He has examined one Dr.G.Subhash Rao as AW.2 and marked Exs.A1 to A13. The second opposite party examined two witnesses i.e., RWs.1 and 2 and marked Exs.B1 to B4. The learned Commissioner having considered the oral, documentary evidence and arguments of both parties, came to the conclusion that the applicant was an employee of the first opposite party. He received injuries during the course of employment and discharged duties of driver and he suffered physical disability as deposed by AW.2, thereby, awarded compensation as stated above.

7. In the appeal preferred by the second opposite party, it was claimed that the learned Commissioner ought to have seen that the applicant failed to prove the employer and employee relationship. There was no other evidence like trip sheet, wage

register, pay slips to prove the employment. In the light of the evidence of AW.1 that he got his license renewed, the learned Commissioner ought to have observed that the applicant did not suffer any physical disability and ought not to have awarded compensation. The second opposite party further submitted that the applicant did not choose to examine the Doctors who treated him soon after the accident but examined Dr.Subhash Rao who has admitted that he never treated the applicant but issued Ex.A5 on the basis of record produced by the applicant. Therefore, the learned Commissioner ought not to have awarded compensation by fixing responsibility against the second opposite party, thereby, sought for setting aside the award by which the opposite party was directed to pay compensation to the applicant.

8. Whereas, in the other appeal preferred by the applicant, he has claimed that he filed the case for a sum of Rs.10,00,000/- but the learned Commissioner awarded a meager amount of Rs.3,22,097/- which is inadequate. The learned Commissioner ought to have seen that the evidence of A.Ws.1 and 2 coupled with Exs.A1 to A13 clearly shows that the monthly salary of applicant was Rs.8,188.05/- but the learned Commissioner restricted the same to Rs.8,000/-. The applicant

used to draw Rs.10,000/- per month apart from batha of Rs.100 per day. He used to contribute all his earnings for the maintenance of the family. As per the Gazette issued by Government of India, monthly wages of a workman was Rs.15,000/-. Therefore, the learned Commissioner ought to have considered the said amount as income of the applicant and awarded compensation.

9. The applicant further pleaded that the evidence of AW.2 clearly shows that in view of the injuries and fracture caused in the accident, the applicant cannot walk for long distance and cannot attend heavy work. The permanent disability though assessed as 35%, loss of earning capacity would be 60% which is evident from Ex.A5. Therefore, the learned Commissioner ought to have awarded Rs.10,00,000/-, thereby, he prayed for enhancement of the compensation.

10. In view of the above contentions, the following points arose for consideration in the appeal.

1. Whether the learned Commissioner failed to calculate the correct income of the applicant?
2. Whether the learned Commissioner failed to appreciate the evidence of AWs.1 and 2 according to whom the applicant suffered physical disability of 35% resulting loss of earning capacity @ 60%, thereby, the appellant is entitled to more

compensation than the amount awarded by the learned Commissioner?

3. Whether the learned Commissioner failed to appreciate the contention of second opposite party with regard to renewal of license of the applicant and whether the applicant did not suffer any physical disability, thereby, not entitled to compensation?
4. To what relief?

POINTS :

11. Since two appeals have been filed against the order, the parties will be referred to as they are arrayed in the original application filed before the learned Commissioner to avoid confusion.

12. The above referred compensation case was filed by the applicant seeking an amount of Rs.10,00,000/- on account of an accident in which he said to have suffered physical disability and loss of earning capacity. The main ground on which the applicant filed the petition was his employment with the first opposite party and he has claimed that he suffered the above injuries during the course of his employment with first opposite party. There is no dispute and in fact there is no much contest with regard to employer and employee relationship even though a ground has been raised by the second opposite party in C.M.A.No.332 of 2022. The evidence that oral and documentary placed before the Court

clearly indicates that the applicant was driver on the Eicher van of first opposite party who did not choose to contest the claim. The report presented to the police soon after the accident further strengthened the case of applicant. It may be true that the accident was occurred when the driver of another lorry dashed the truck of first opposite party. The second opposite party did not place any material to show that the applicant has filed separate applications/separate cases against the owner and insurer of the lorry which involved in the case. According to the claim of the applicant, he received injuries during the course of his employment with opposite party No.1. Therefore, there is no bar for filing such an application and on that ground, the second opposite party cannot sought for the dismissal of the claim.

13. The applicant has filed the above stated E.C.No.246 of 2016 for compensation on the ground that he received injuries in a road accident during the course of his employment with 1stopposite party. He has claimed that he received fracture and suffered permanent physical disability, thereby, entitled to Rs.10,00,000/- but the learned Commissioner granted an amount of Rs.3,22,097/- thereby, he prayed for enhancement of the compensation.

14. Whereas, the 2nd opposite party/insurance company has claimed that the applicant received only simple injuries, there is no acceptable evidence for the alleged physical disability, the evidence of AW.2, who is a stock witness and who did not treat the applicant is not believable and that the applicant got his driving license renewed, therefore it shows he is fit for driving and he is not entitled to any compensation on the ground of permanent physical disability.

15. In view of the above conflicting claims, I will first deal with the appeal filed by 2nd opposite party.

16. The 2nd opposite party took all the above contentions before the learned Commissioner. The applicant has been examined as AW.1. Even though he has claimed Rs.10,000/- per month towards wages and Rs.100/- per day towards batha, the same was not accepted by the learned Commissioner but having considered the evidence and in view of G.O.M.S.No.83 dated 22-11-2006 which provides basic wages for driver of a heavy vehicle, the learned Commissioner considered the wage of the applicant as Rs.8,000/- per month. In fact as per G.O. actual wages of a driver of a heavy vehicle was Rs.8,188.25 ps per month. Therefore, the finding cannot be said to be excessive and he has adopted correct

procedure for assessing the actual monthly income of the applicant.

17. The evidence of AW.1 shows that he got the driving license renewed after the accident and it is valid till 26-12-2020. The 2nd opposite party claimed that the driving license will be renewed only after necessary driving test and when it is proved that the driving license is renewed it shall be believed that AW.1 is fit for driving and it cannot be said that he is suffering from physical disability. However, the applicant has claimed that he is not continuing his profession as driver and he has been suffering from acute pain in the leg. The 2nd opposite party is not able to produce any proof that the applicant got employment as driver or he is still attending his driving profession by producing any evidence. Simply because he got the license renewed it may not be a proof that he is attending driving. The learned counsel for the applicant has argued that the applicant got his license renewed only for I.D. proof and there is no positive evidence to believe that he was attending the same profession. Therefore, the contention of the 2nd opposite party that the driver is fit for attending his duties falls to the ground.

18. The learned Commissioner while considering the evidence of AW.1 and the Medical Officer who has issued the disability certificate came to a correct conclusion and awarded compensation. The learned Commissioner made an observation that the act under which the application was filed is a beneficial legislation. Therefore, the applicant is entitled to compensation.

19. The next objection raised by the 2nd opposite party is about the physical disability. The 2nd opposite party has claimed the evidence of PW.2 cannot be accepted on two grounds. Firstly, he was not the treated Doctor and he has issued medical certificate only on physical examination and secondly, AW.2 is a stock witness. He used to attend the courts in various similar cases. Therefore, much weight need not be given to his evidence. However, as could be seen from the cross-examination of AW.2, it is quite clear that the applicant was admitted to a Hospital on 04-09-2016 for two injuries which includes laceration on right little toe and he was discharged from the Hospital on 06-09-2016. He has again visited the Hospital on 15-09-2016 for swelling followed by tenderness of medial malleolus and pain in the foot. The X-Ray indicates a bimalleolar fracture which needs fixation and he was advised hospitalization. AW.1 had claimed that he suffered pain

while walking. According to the evidence of AW.2, the applicant came to him about one year after the accident and as per the discharge summary applicant sustained only one facial injury and laceration of right little toe. However, AW.2 further deposed that when AW.1 went to the Hospital on 15-09-2016, they noticed fracture and he was admitted into the hospital for operation. AW.2 denied the suggestion that the applicant did not sustain any fractures. AW.2 denied the suggestion that Ex.A5 was fabricated. The evidence of AW.2 clearly shows that the applicant sustained 35% physical disability. The 2nd opposite party could not place any material to believe that AW.2 gave false evidence. AW.2 is a Medical Officer and his evidence is admissible. Therefore, as rightly held by learned Commissioner, the evidence of AW.2 being a competent witness cannot be discarded on the ground that he has issued a false certificate. Therefore, the evidence on record would show that soon after the accident, the applicant was admitted in Hospital, later a fracture was noticed. The applicant undergone treatment for the fracture and competent Medical Officer issued a medical certificate certifying physical disability of applicant @ 35%. Therefore, the learned Commissioner rightly

awarded the compensation and there are no grounds to interfere with the said finding.

20. The applicant has filed Cross Appeal seeking enhancement of the compensation. The applicant has claimed that he used to receive wages @ Rs.10,000/- per month apart from batha of Rs.100/- per day. But he did not produce any acceptable evidence like Bank statement or other proof that the first opposite party was actually paying Rs.10,000/- per month and paying Rs.100/- per day towards batha. Similarly, the applicant was unable to produce any record that there was a Government order by which a workman is entitled to Rs.15,000/- per month. The learned Commissioner while considering the oral evidence and on the basis of other circumstances arrived the monthly income of the applicant as Rs.8,000/-. As per the order passed by the learned Commissioner, it is categorically stated that there was a Government order vide G.O.Ms.No.83 dated 22-11-2006 by which the driver of a heavy vehicle is entitled to total wage of Rs.8,188.25 ps per month. The learned Commissioner based on the Government Gazette No.1047 restricted the said wage to Rs.8,000/- thereby, the same cannot be said to be an arbitrary order. The learned Commissioner rightly assessed the monthly

income of the applicant as Rs.8,000/-. The learned counsel for the applicant has argued that the applicant suffered fracture resulting physical disability and in view of the accident the applicant was unable to attend his profession. Therefore, the disability shall be treated as 100% and he is entitled to more compensation. But in the light of the evidence of AW.2 and as the injury certificate and discharge summary shows that the applicant suffered fracture of right little toe, it cannot be said that the applicant is unable to do any work and he is not in a position to earn livelihood. Therefore, such a disability cannot be treated as 100% physical permanent disability and on that ground, no enhancement can be ordered. Therefore, there are no merits in the request of the applicant. In view of the above said reasons, both the appeals are liable to be dismissed.

21. In the result, appeals are dismissed but without costs.

Consequently, Miscellaneous applications if any, are closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 01.12.2022
PLV

