

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**WEDNESDAY ,THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL NO: 948 OF 2011

Appeal Under Section 30 of Workmen's Compensation Act aggrieved by the order dated 01.03.2011 passed in WC.No.53 of 2003 on the file of the Commissioner for Workmen's compensation and Deputy Commissioner of Labour at Nizamabad.

Between:

Parki Prasad, S/o. Bhushanaiah, Age: 37 years, Occ: Ex.Driver, R/o. Advilingala Village, Yellareddy Mandal, Nizamabad District.

...APPELLANT/CLAIMANT

AND

1. K. Govind, S/o. Balaiah, Age: Major, Occ: Tractor Owner R/o. Advilingala Village, Yellareddy Mandal, Nizamabad District.
2. United India Insurance Company Limited, Represented by its Br. Manager H.No. 1-11-121, Station Road Kamareddy, Nizamabad District.

CMA against R1 dismissed vide court order dated 08.07.2016

...RESPONDENTS/ RESPONDENTS

Counsel for the Appellant : Sri K. MAHENDAR REDDY

Counsel for the Respondent No.2 :Sri K. RAJENDRA PRASAD (NOT PRESENT)

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.948 of 2011

JUDGMENT:

1. The present Civil Miscellaneous Appeal has been directed against order dated 01.03.2011 in W.C.No.53 of 2003 NF on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour at Nizambad (hereinafter referred to as 'the Commissioner'), whereunder the claim of the appellant herein was partly allowed granting compensation of Rs.1,22,237/- and the Commissioner directed the respondents herein to pay the compensation within 30 days from the date of receipt of said order, failing which interest at 12 % per annum from the date of default of payment was granted. The present appeal is filed at the instance of the applicant before the Commissioner dissatisfied with the fixation of compensation and interest.

2. Learned counsel for the appellant contended that the Commissioner has taken minimum wages into consideration in spite of clear admission by respondent No.1, who is the owner of the vehicle, before the Commissioner that he was paying an amount of Rs.4,500/- per month to the appellant. Such findings of the Commissioner suffer from perversity. He also contended that

the Commissioner has not rightly determined the impact of physical disability on the earning disability and the earning disability is fixed *vis-à-vis* physical disability which approach is not correct. Lastly, it is contended that the interest was granted from the date of default of payment of compensation and not from the date of accident, which is contrary to the provisions of the Workmen's Compensation Act, 1923 and the law laid down by the Apex Court.

3. None appeared and there is no representation for the respondents.

4. Dealing with the first contention, admittedly respondent No.1-owner of the vehicle has filed counter and in the said counter he admitted that the injured-appellant was paid Rs.4,500/- per month towards wages. The evidence of A.W.1 also shows that he earns monthly wages of Rs.5,000/-. It is not disputed that respondent No.1-owner did not enter into the witness box and he did not made himself available for cross-examination by respondent No.2-insurance company. The admissions of respondent No.1 in his counter cannot be put against respondent No.2 to his disadvantage without he being subjected to cross-examination by respondent No.2. Therefore, the Commissioner has rightly discarded such

admissions and rightly fixed the compensation based on the minimum wages. Such findings do not suffer from any perversity and requires no interference.

5. Dealing with the second contention, there is no doubt that the doctor has determined the physical disability at 40%, but he has not determined the loss of earning capacity based on such physical disability. The statute requires that the doctor has to determine the earning disability based on the physical disability. While fixing such earning disability, the doctor is supposed to refer to scheduled injuries. The doctor has not resorted to such approach. The Commissioner based on physical disability and impact on the nature of employment has taken earning disability as 40%. This Court feels that the Commissioner is the best person so as to decide the impact of injuries on the earning disability. Such findings of the Commissioner do not suffer from any perversity. Therefore, this Court cannot interfere into such findings.

6. Lastly, as seen from the impugned award, the Commissioner has fixed the compensation and directed the respondents to deposit the amount of compensation within 30 days from the date of receipt of order and if not deposited the respondents were directed to pay interest at 12 % per annum till the date of deposit. This

approach of the Commissioner is not in tune of provisions under the Workmen's Compensation Act, 1923. As per the said Act, the compensation shall be deposited within 30 days from the date of accident and if the same is not deposited, the defaulters are liable to pay interest at 12 % per annum from the 31st day of accident till the date of deposit. This is a statutory requirement and the Commissioner cannot deviate from such mandated requirement. Therefore, this Court feels that there is perversity in granting interest and such findings required to be modified.

7. In the result, the Civil Miscellaneous Appeal is partly allowed and the findings of the Commissioner granting interest at 12% per annum from the date of default of payment of amount as fixed by the Commissioner is modified and the appellant is granted interest at 12% per annum from the 31st day of accident till the date of deposit. The rest of the findings of the Commissioner are confirmed. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

Sd/- M. VIJAYA BHASKAR
JOINT REGISTRAR

//TRUE COPY//

GP

SECTION OFFICER

To,

1. The Commissioner for Workmen's compensation and Deputy Commissioner of Labour at Nizamabad
2. One CC to Sri K. M. MAHENDER REDDY, Advocate [OPUC]
3. One CC to Sri K. RAJENDRA PRASAD, Advocate [OPUC]
4. Two CD Copies

HIGH COURT

DATED:19/04/2023

JUDGMENT

CMA.No.948 of 2011



**PARTLY ALLOWING THE
CIVIL MISCELLANEOUS APPEAL.**

⑥ p.m.
2/6/23.