

THE HON'BLE SRI JUSTICE M.LAXMAN
CIVIL MISCELLANEOUS APPEAL No.1269 of 2008

JUDGMENT:

1. The present Civil Miscellaneous Appeal is directed against the Order dated 16.10.1997 in W.C.No.195 of 1996 on the file of the learned Commissioner for Workmen's Compensation cum Assistant Commissioner of Labour, at Nizamabad, wherein the claim of respondent No.1 seeking compensation for the injuries sustained by him during the course of employment, at the time of accident that occurred on 07.02.1996 was partly allowed granting compensation of Rs.70,154/-. Aggrieved by the same, the present Appeal is preferred by the Oriental Insurance Company Limited, who was the opposite party No.2 before the Commissioner.

2. The main challenge in the present Appeal is with regard to the findings touching the employer and employee relationship and fixation of physical disability of the applicant at 35% as determined by the Commissioner.

3. Heard.

4. The case of the appellant was that, the Commissioner has not properly appreciated the evidence on record with regard to employer and employee relationship and there is no evidence

produced by the claimant that he was working as cleaner of the lorry involved in the accident. It is also his contention that the Commissioner ought not to have considered 35% permanent partial disability.

5. The contention of the respondents was that, the claimant was cleaner of the lorry travelling from Nanded towards Nizamabad side and when the lorry reached Kusunur Village sivar on Nanded to Hyderabad road at about 12:30 P.M., another lorry came from opposite direction and dashed against the applicant's lorry. As a result, the claimant, who was respondent No.1 travelling in the lorry as cleaner sustained injuries. It is also his contention that the respondent No.1 sustained head injury, fracture injuries to both the legs, both the hands and also injuries on other parts of the body. Considering the injuries, the Doctor determined 35% permanent partial disability. The same was accepted by the Commissioner in granting compensation and said findings of the do not suffer from any perversity and the interference from this Court arises only when the findings of the Commissioner suffer from perversity.

6. The evidence on record demonstrates that the accident occurred when the injured was travelling in the lorry as a cleaner

and there is no dispute from the owner of the lorry that the injured is not a cleaner. Further, there are multiple injuries sustained by the cleaner which include two fracture injuries to both the legs. On considering the same, the Doctor determined the permanent partial disability as 35% and the same was accepted by the Commissioner. The Commissioner adopted the said percentage for loss of earnings based on the impact of disability on the profession of the injured. The said findings of the Commissioner are based on the material on record which do not suffer from any perversity. Hence, I do not find any substantial question of law involved in the present appeal. The appeal is devoid of merits and hence, liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE M.LAXMAN

06.01.2023
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26

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Dated: 06.01.2023

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