

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CMA No.235 of 2023

JUDGMENT:

M/s. The New India Assurance Company Limited/ opposite party No.2 has filed this Civil Miscellaneous Appeal, assailing the order dated 20.07.2007 in W.C.No.55 of 2005 before the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Sri T. Anjaiah Karmika Sankshema Bhavan, R.T.C. Cross Roads at Hyderabad.

2. This application was filed by the applicant under Workmen's Compensation Act, 1923 (for short 'the Act') claiming compensation against his employer/opposite party No.1 and the insurance company as well as opposite party No.3 for loss of earnings. The learned Commissioner after due enquiry has allowed the said application awarding an amount of Rs.3,13,109/- towards compensation, stamp duty and advocate fee directing the opposite party Nos.1 & 2 to pay the said amount. Feeling

aggrieved by the same, opposite party No.2/insurance company has filed this appeal.

Brief facts:

3. The applicant is a workman employed by opposite party No.1 as driver of his auto rickshaw bearing No.AP-28T-4694 and received injuries in an accident occurred during the intervening night of 12/13 of November 2004 in the course of his employment, near Nampally, Hyderabad. He sustained grievous multiple fracture injuries on his both legs, sustained head injury. He was shifted to Osmania General Hospital for treatment, a case in Crime No.272 of 2004 was registered by police, Nampally. The opposite party No.1 has insured this auto with the opposite party No.2, vide policy No.610300/31/4/09358, which is valid from 25.08.2004 to 24.08.2005.

4. In spite of receipt of notice, the opposite party No.1/owner of the vehicle did not participate in the proceedings. Whereas, the opposite party No.2/insurance company has filed a detailed counter denying the manner of occurrence of accident, employer employee relationship,

injuries received by the applicant alleging that there is no privity of contract and the compensation claimed is not in accordance with the schedule.

5. During enquiry, on behalf of the applicant, he himself got examined as AW.1. Dr. S. Vasudev Rao, Orthopedic Surgeon is examined as AW.2. No witnesses are examined on behalf of the opposite party No.2/insurance company. The learned Commissioner on careful appreciation of the material available on record allowed the claim of the applicant in W.C.No.55 of 2005 awarding an amount of Rs.3,13,109/-.

6. Feeling aggrieved by the same, the insurance company has filed this appeal. As per the grounds of appeal, all the ground Nos.1 to 5 are only on factual side, but it is mentioned that ground Nos.1 to 5 deals with substantial question of law.

7. Heard learned counsel for the appellant/ insurance company. None appears on behalf of respondents, in spite of service of notice.

8. The learned counsel for the appellant/ insurance company strenuously contends that though the Doctor has certified 40% physical disability, the loss of earning capacity is assessed at 100%. Considering the factual matrix of the case, this Court also directed only for withdrawal of 50% of the amount, instead of 100% amount, accordingly prayed to set aside the order impugned.

9. I have given my anxious and careful consideration of the evidence available on record. AW.1 is the applicant. He has filed his evidence affidavit in lieu of the chief examination. In his evidence, Exs.A.1 to A.27 documents are marked. Ex.A.27 is equivalent to Ex.B.1 which is the insurance policy of said auto rickshaw. AW.1 was cross-examined at length. It is well established with his evidence that he was working as driver of the said auto rickshaw and met with an accident, sustained injuries in the accident that arose in the course of employment.

10. The learned counsel for the appellant/ insurance company strenuously contends that the

percentage of disability and the consequential loss of earning capacity are not properly assessed. AW.2 is Dr. S. Vasudeva Rao, Orthopedic Surgeon, he is a qualified and competent medical practitioner. This witness has stated that the applicant has sustained Grade-I compound commuted fracture of left leg and the injuries mentioned under Exs.A.5 to A.7 and the injuries certified under Ex.A.16 are the same injuries. Surgery was conducted and plating was also done to the fracture by the time of giving evidence. The Doctor has stated that the fracture is not yet united, infection is present with discharge of pus on the left leg, left knee is stiff and left ankle movements were restricted by 40 degrees. Explaining the nature of injuries, the Doctor has assessed permanent and partial disability of the applicant at 40%. Further explained that the applicant cannot sit and squat, cannot walk without the help of walker and he cannot take any one on his left lower limb. As such, the learned Commissioner has assessed the loss of earning capacity at 100% considering the nature of employment of the applicant insured.

11. In this context, I may refer to the recent decision of the Hon'ble Apex Court in ***Golla Rajanna etc., etc., Vs. The Divisional Manager and another etc., etc.***¹ wherein while dealing with the scheme of Workmen's Compensation Act, held at paragraph No.11 as under:

“Under the scheme of the Act, the Workmen's Compensation Commissioner 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. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act”.

12. The Apex Court has held that the finding of the Commissioner for Workmen's Compensation as to the nature of injury and the percentage of disability is purely a question of fact and the High Court cannot reduce the compensation awarded by re-appreciating the evidence and recording its own findings on the percentage of disability

¹ 2017 (2) ALD 14 (SC)

and loss of earning capacity. Therefore, considering the principles laid by the Apex Court in the above decision and the scheme of Section 30 of the Act, I do not find any merit in the claim made by the appellant/insurance company. The learned Commissioner has assessed the loss of earning capacity on overall consideration of the entire facts including the evidence of Doctor. I find no merit in the claim made by the insurance company.

13. That apart, the insurance company having filed the counter denying the averments of the applicant did not choose to examine any of its authorized employees in support of their claim. There is no question of law much less substantial question of law involved. In the above circumstances, an adverse inference may have to be drawn under Section 114 (g) of the Indian Evidence Act, 1872 against the appellant/insurance company holding that the defence set up by them in their counter is not correct. To arrive at this conclusion, I am supported by the principles

laid by the Hon'ble Supreme Court in ***Vidhyadhar Vs. Manikrao and another***².

14. For all the reasons stated above, I do not find any infirmity or irregularity in the above findings recorded by the learned Commissioner and the conclusions arrived at in the order impugned and the same does not warrant interference of this Court and it is sustained.

15. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the impugned order dated 20.07.2007 in W.C.No.55 of 2005 before the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Sri T. Anjaiah Karmika Sankshema Bhavan, R.T.C. Cross Roads at Hyderabad, in its entirety. The respondent/applicant is entitled to withdraw the amount deposited before the Commissioner for Workmen's Compensation in accordance with the impugned order. In the circumstances of the case, there shall be no order as to costs.

² AIR 1999 SC 1441

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

A. VENKATESHWARA REDDY, J.

Date: 09.03.2023

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