

(1999) 08 AP CK 0062
In the Andhra Pradesh High Court
Case No : AAO No. 40 of 1993

ITW Signode India Limited

APPELLANT

Vs

P. Sitaramaraju

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Employees Life Insurance (Amendment) Act, 1966 — Section 51
Workmens Compensation Act, 1923 — Section 2(8), 3

Citation : (2000) 2 ACC 469 : (2001) ACJ 91 : (1999) 5 ALD 628 : (1999) 5 ALT 646

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. C.R. Sridharan, for the Appellant; Mr. M.S.R. Subrahmanyam, for the Respondent

Judgement

1. This Civil Miscellaneous Appeal is filed being aggrieved by the Order and decree dated 24-4-1992 made in WC Case No.298 of 1989 of the Commissioner for Workmen's Compensation, Ranga Reddy District Zone, under which the Commissioner for Workmen's Compensation awarded a sum of Rs.43,382/- towards compensation to the appellant on the basis of his age and directed the opposite party to remit the amount by way of DD.

2. The applicant filed the above case claiming compensation for the personal injury received by him due to the accident arising out of and in the course of his employment with the opposite party. The applicant was employed as production operator with the opposite party and while he was proceeding to the factory to attend to his duties in the first shift around 5.35 a.m. on 20-1-1989, he met with an accident near B.M.F. Belting company, Patancheru and as a result of which, he received fracture to Patela and left Funeral Condilla and sustained injury to knee and he was admitted in the NIMS. Therefore, he claimed Rs.43,694/-.

3. The opposite party in his counter denied the allegations made by the applicant in his application and contended that the cause of alleged accident is not within

his knowledge. It is further stated that there were three persons riding on a motor cycle which met with an accident on 20-1-1989 and that the applicant was one Pillion riders, which is in violation of law relating to the traffic. It is further contended that there is no disability whatsoever, and therefore, the application is totally misconceived, and there is no loss of earning capacity to the applicant on account of alleged accident. Therefore, he prayed to dismiss the application.

4. The learned Commissioner for Workmen's Compensation considering the evidence available on record observed that the applicant suffered disability to the extent of 40% and therefore, awarded a sum of Rs.43,382/- towards compensation basing on the age of the applicant.

5. Aggrieved by the said order, the opposite party, the appellant herein filed the present appeal, contending that the Commissioner erred in holding that the applicant suffered disability and lost his earning capacity. It is further contended that the Commissioner failed to appreciate Ex.P4 and he should not have given credence to it, as the applicant himself had resumed duty after producing exhibits R1 and P2, which clearly show that there was no disability whatsoever, and he is doing normal work.

6. It is further contended that the Commissioner totally erred in holding that the accident and the consequent injury arose out of and in the course of employment. Therefore, he prayed to set aside the order of the Commissioner for Workmen's compensation.

7. Relying on the evidence of RW1 it is contended that the accident occurred 3 to 4 kilometres away from the factory in which the applicant was working and the accident occurred when he was going from his house to the factory. It is further contended that the applicant was travelling on a motor cycle belonging to a co-employee, and not the vehicle provided by the appellant, who is the employer to go to the factory or to return from the factory to his.

8. In support of his contention he relied upon a judgment reported in case of The Regional Director, ESI Corporation and another v. Francis De Costa and another, 1996 LLR 953, wherein the Supreme Court considered Section 2(8) of Employees State Insurance Act, 1948.

9. According to Section 2(8) of the Act "Employment Injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

In the above case it was held that:

"Francis De Costa, the first respondent met with an accident on June, 26, 1971 while he was on his way to his place of employment, a factory at Koratty. The accident occurred at a place which was about one kilometre away to the north of the factory. The time of occurrence was 4.15 p.m. It has been stated that the

duty-shift of the respondent would have commenced at 4.30 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employers M/s. J. and P. Coats (P) Ltd."

The Supreme Court, in Para 11 of the judgment while construing the meaning of the phrase "In the course of his employment" considered the observation made by Lord Denning as follows:

"It was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to include doing some thing which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind."

10. In Para 12 of the above judgment, the Supreme Court held that:

"This is precisely the case before us. Here also, we have a case of a person going from his home to his place of work. But he suffers injury in an accident on the way. It cannot be said that the accident arose out of and in the course of his employment. It was faintly suggested by Mr. Chacko, appearing on behalf of the respondent, that the bicycle was bought by taking a loan from the employer. That, however, is of no relevance. He might have borrowed money from his company or from somewhere else for purchasing the bicycle. But the fact remains that the bicycle belonged to him and not the employer. If he meets with an accident while riding his own bicycle on the way to his place of work, it can not be said that the accident was reasonably incidental to the employment. The deeming provisions of Section 51-C, which came into force by way of an amendment effected by Employees' Life Insurance (Amendment) Act of 1966 (Act No.44 of 1966) enlarged the scope of the phrase "in the course of employment" to include travelling as a passenger by the employer's vehicle to or from the place of work. The legal fiction contained in Section 51-C, however, does not come into play in this case because the employee was not travelling as a passenger in any vehicle owned or operated by or on behalf of the employer or by some other person in pursuance of an arrangement made by the employer."

11. Ultimately in that particular situation it was held that the accident was not occurred in the course of employment and the injury was sustained while the employee was on his way to his factory where he was employed and the accident took place one kilometer away from the place of employment.

12. In the present case on hand, the applicant met with an accident three to four kilometres away from his place of work, while he was going on his motor cycle to his place of employment, and that the vehicle on which he was going was not arranged by the Employer to go to the place of employment or to return from the place of employment to his residence.

13. In view of the decision of the Supreme Court referred The Regional Director, ESI Corporation v. Francis De Costs (*supra*), the order of the Commissioner for Workmen's Compensation is liable to be set aside.

14. Accordingly, this appeal is allowed and the order of the Commissioner for Workmen's Compensation is set aside. There shall be no order as to costs.

15. However, as the learned Counsel for the respondent-applicant submitted that as per the orders of this Court, the respondent-applicant has withdrawn 1/3rd of the deposited amount, without furnishing any security, the appellant is not entitled to recover the said 1/3rd amount, which was withdrawn by the respondent-applicant.