
(2005) 07 AP CK 0023
In the Andhra Pradesh High Court
Case No : C.M.A.No. 264 of 2005

National Insurance Company Ltd.

APPELLANT

Vs

M. Shyam Prasad and Another

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4, 4(1)

Citation : (2006) 1 ACC 677 : (2006) ACJ 775 : (2005) 6 ALD 56 : (2005) 5 ALT 750 : (2006) 108 FLR 267

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : T. Mahender Rao, for the Appellant; K.L.N. Rao, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, u/s 30 of the Workmen's Compensation Act, 1923, aggrieved by the award of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Hyderabad, passed in W.C. Case No. 131 of 2004.

2. For the purpose of convenience, I refer the parties herein as arrayed before the Tribunal below.

3. The first respondent herein who was claimant before the Tribunal below, filed application, claiming compensation of Rs. 4,00,000/-, under the provisions of the Workmen's Compensation Act, 1923. The said claim was made on account of personal injuries suffered by him accidentally on 1-10-2003. As stated in the claim application, It was his case that he was employed by the first Opposite Party as driver on his vehicle, i.e. Tata Sumo No. AP 15 V 5701, which was insured with Opposite Party No. 2, on monthly wage of Rs. 3,500/-, apart from daily batta of Rs. 100/-. It was stated in the application that on 1-10-2003, during the course of employment, when the applicant was driving the said

vehicle, and, when he was proceeding from Guntur to Rayadurgam in Anantapur District, he lost control over the vehicle and dashed to the lorry bearing Registration No. AP 02V 2854, which was parked on the road side, and, in the said accident, he suffered multiple injuries including fracture to ribs, nasal bone etc. It was his case that immediately after the accident, he was shifted to Sanjeevini Orthopaedic and Physiotherapy Hospital, Guntur, and there after, for better treatment, he was shifted to Kakinada Hospital. It was stated that on account of injuries suffered by him in the said accident, he suffered physical disability, and, he is not able to breath normally, unable to walk longer distance, and in spite of his request with the Opposite Parties to settle the compensation, they did not settle the compensation. On the said ground, he claimed compensation of Rs. 4,00,000/-, before the Tribunal below, together with attendant benefits.

4. Opposite Party No. 1, who was the owner of the vehicle, i.e. TATA Sumo bearing registration No. AP 15 V. 5701, contested the claim before the Tribunal. While admitting the manner of accident, he also admitted the wages which were being paid to the applicant at Rs. 3500/- per month, apart from daily batta of Rs. 100/-. But, however, it was his case that inasmuch as the said vehicle was insured covering the risks of driver, Opposite Party No. 2 alone is liable for payment of compensation. At last, it is pleaded by the first Opposite Party that the compensation of Rs. 4,00,000/- claimed by the applicant is excessive and exorbitant.

5. The appellant herein, who was the Second Opposite Party before the Tribunal below, also contested the claim. While generally denying the allegations of the applicant, he disputed the employment of the applicant as driver of the first Opposite Party, and, payment of wages at Rs. 3,500/- per month apart from daily batta of Rs. 100/-. It was also the case of the second Opposite Party that the claim made by the applicant is excessive, and, higher than the actual entitlement as per the provisions of the Workmen's Compensation Act, 1923.

6. With reference to the above pleadings on record, the Tribunal below framed the following issues for consideration:

"(1) Whether the applicant Mr. M. Shyam Prasad received personal injuries in an accident on 1-10-2003 that arose out of and in the course of his employment under OP1 and became partially and permanently disabled and lost some percentage of his earning capacity?

(2) If so, what is the percentage of loss of earning capacity?

(3) To what extent, the applicant is entitled for compensation and who is liable to pay?"

7. With reference to the above said issues, the parties have adduced evidence before the Tribunal below. On behalf of the applicant, the applicant himself was examined as A.W.1 and, the doctor who certified the disability was examined as

A.W.2, and documentary evidence under Exs.A1 to A7 were marked. On behalf of the Opposite Parties, no oral evidence was let in, but, however, a copy of the insurance policy was marked as Ex.B-1

8. The Tribunal below, while considering the oral and documentary evidence on record, had recorded the finding that the accident occurred while the applicant was on duty, and, during the course of employment, and, he suffered fracture to nasal bone, apart from fracture to 3rd, 4th and 5th right ribs, and, also suffered physical disability on account of injuries suffered by him. With regard to loss of earning capacity, the Tribunal below, had recorded the findings that on account of injuries suffered by him, the applicant has suffered loss of earning capacity to the extent of 30%. But, however, with regard to quantum of compensation, though it was the case of the applicant that he was drawing salary of Rs. 3,500/- per month apart from daily batta of Rs. 100/-, but, in absence of clear documentary evidence on record to that effect, the Tribunal below, basing on the notified minimum wages by the Government of Andhra Pradesh, for light motor vehicle driver, has assessed the total earnings at Rs. 2934/- per month. Further, considering the claim, with reference to the wages, and in proportion to the loss of earning capacity to the extent of 30%, the Tribunal below awarded compensation of Rs. 1,16,900/-, apart from compensation on account of costs towards stamp duty, Advocate fee etc. Thus, the Tribunal below awarded total compensation of Rs. 1,18,144/- with interest at 9% per annum.

9. In this appeal, it is submitted by Sri T. Mahender Rao, the learned Counsel appearing for the appellant that the Tribunal below erred in awarding compensation, by assessing loss of earning capacity at 30%. It is submitted by the learned Counsel that the injuries suffered by the claimant are non-schedule injuries, and, to consider the claim of the applicant, unless there is certification by the competent doctor with regard to loss of earning capacity, as contemplated u/s 4(1)(c)(ii) of the Workmen's Compensation Act, 1923, the applicant is not entitled for any such compensation on account of loss of earning capacity. Further, it is submitted that in the instant case, though the Doctor has certified the disability suffered by the applicant at 25%, however, the Tribunal below exceeding the said percentage, has assessed the loss of earning capacity at 30%. In support of his submissions, the learned Counsel has placed reliance on the judgment of the learned Single Judge of this Court in the case of New India Assurance Co. Ltd. Vs. Sammayya M. Shankar (Workman) and Another, . In the above said judgment, while interpreting the provision u/s 4(1)(c)(ii) of the Workmen's Compensation Act, 1923, on the ground that the Commissioner has not followed the prescribed statutory procedure, the matter was remanded to the Tribunal below for fresh disposal in conformity with the provisions of the Act. Further, reliance is placed on the judgment of the Karnataka High Court in the case of Shivalinga Shivanagowda Patil and Others Vs. Erappa Basappa Bhavihala and Others, , wherein the Full Bench of Karnataka High Court has held, that assessment of loss of earning capacity shall be with reference to all the work which he was capable of performing at the time of accident, and, not with

reference to the work which he was performing at that time.

10. On the other hand, it is submitted by Sri K.L.N. Rao, the learned Counsel appearing for the applicant, that in this case, in the accident, the applicant has suffered multiple injuries including fracture to nasal bone, and, fracture to 3rd, 4th, & 5th ribs, and, in view of mal-union of the third rib, there is decrease in lung expansion, which resulted in permanent physical disability. It is further submitted that having regard to the disability which was certified at 25% by the doctor, the Tribunal assessed the earning capacity, having regard to nature of job, disability suffered etc. It is submitted that having regard to the nature of disability suffered in the accident, the Tribunal below correctly assessed the loss of earning capacity at 30%, taking into account the nature of job which the applicant was performing. The learned Counsel placed reliance on the judgment of this Court in the case of Gona Sivasankar Vs. K. Varaprasad and Another, , wherein, this Court has held that in cases where percentage of loss of earning capacity was not determined by the medical practitioner, it is open for the Tribunal to determine the same having regard to the percentage of disability and nature of functions to be discharged by the workman.

11. With reference to the above submissions, in this case, it is to be seen, that the amount of compensation payable to the applicant is provided as per Section 4 of the Workmen's Compensation Act, 1923; whereas Section 4(1)(a) and (b) of the Act provides procedure of assessing the compensation in the cases, where death results from injury, and, where permanent total disablement results from injury. Section 4(1)(c)(i) of the Act prescribes procedure for assessing the compensation where permanent partial disablement results from injury specified in the Schedule-1. Insofar as the non-schedule injuries are concerned, Section 4(1)(c)(ii) applies. Section 4(1)(c) of the Act reads as follows:

"4. Amount of Compensation:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows; namely

(a) xxxxxx xxxxxx xxxxxx (b) xxxxxx xxxxxx xxxxxx

(c) Where permanent partial disablement results from the Injury:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury."

From a reading of the above said provision, it is clear that, in case of an injury

not specified in the Schedule-1, which results in permanent total disablement, the compensation payable is proportionate to the loss of earning capacity, on account of such disability. In the instant case, the applicant, who was the driver, has suffered multiple injuries including fracture to nasal bone and fracture to 3rd, 4th & 5th ribs. For the purpose of assessment of compensation, for non-scheduled injuries, as per the provisions of the Act, it all depends on loss of earning capacity. Percentage of physical disability suffered by the workman and resultant loss of earning capacity need not be same at all times. For the purpose of assessing the compensation, it is not merely concern of physical injury and percentage of physical disability, but, what is required to be seen is, diminution of physical powers caused thereby on the earning capacity of the affected workman. To what extent the earning capacity has been affected, it can never be for a medical witness to say. Medical evidence is opinion, evidence and it is only with regard to the physical aspect of the injuries, that the opinion of a medical witness is relevant and admissible, as the opinion of an expert. But loss of earning capacity is not a matter for medical opinion and is not a matter to which a medical witness can possibly speak. After the medical evidence as to the nature and measure of the physical infirmity is collected, the substance of such evidence is to be taken over and applied in the assessment of loss of earning capacity, as one of the factors and may be the principal factor. Loss of earning capacity is not necessarily co-extensive with the loss of physical capacity, and, it is always open for the Tribunal to assess the loss of earning capacity, having due regard to the medical evidence on record. In that view of the matter, the submission of the learned Counsel for the appellant, that in absence of any certification by the qualified medical practitioner with regard to loss of earning capacity, the Tribunal below awarded compensation, cannot be accepted. In this case, there is evidence on record to show that in view of fractures suffered, there was mal-union of one of the ribs, and, ultimately it resulted in partial permanent disability as certified by the doctor, i.e. A.W.2. Though physical disability was certified at 25%, but, it is always open for the Tribunal to determine the percentage of loss of earning capacity, going beyond the percentage of disability certified by the Doctor, by considering the nature of job, physical diminution of power on the workman, having regard to the medical evidence on record. Percentage on both aspects, namely percentage of physical disability and percentage of loss of earning capacity need not be same. In that view of the matter, the said submission of the learned Counsel for the appellant, that the Tribunal below awarded compensation by exceeding 25% of the physical disability also cannot be accepted. In this regard, the judgment relied on by the learned Counsel for the respondent-applicant in the case of Gona Sivasankar v. K. Varaprasad (3 supra), also supports his case. For the foregoing reasons, I do not find any merit in this Civil Miscellaneous Appeal, which warrants interference (sic. interference) in exercise of powers u/s 30 of the Workmen's Compensation Act, 1923.

12. The Civil Miscellaneous Appeal is accordingly dismissed. No order as to costs.