

(2000) 02 AP CK 0028
In the Andhra Pradesh High Court
Case No : AAO No. 1402 of 1994

Oriental Insurance Company Limited Hyd.	APPELLANT
Vs	
Koti Koti Reddy and another	RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2000) 2 ACC 210 : (2001) ACJ 244 : (2000) 2 ALD 815 : (2000) 2 ALT 574 : (2000) 1 APLJ 508 : (2000) 85 FLR 725 : (2000) 2 LLJ 552

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Mr. H.K. Prasad, for the Appellant; Mr. V. Venugopal Rao, for the Respondent

Judgement

1. This appeal is filed by the Oriental Insurance Company against the order of the Commissioner for Workmen's Compensation, Guntur passed in WC Case No.117 of 1992 dated 22-6-1993.
2. The 1st respondent is the applicant before the Commissioner for Workmen's Compensation, Guntur Region, Guntur (hereinafter referred to as "the Commissioner"). The 2nd respondent is the owner of the vehicle and the appellant is the insurer.
3. While the 1st respondent was driving the lorry bearing No.AEG 1152, the lorry met with an accident on 29-7-1991 and he received personal injuries in the accident arising out of and in the course of his employment and got permanent disability and loss of earning capacity to the tune of 100% as the driver of the vehicle. The injuries caused to the 1st respondent were on the forehead and right leg particularly at joint and foot. The permanent disability was assessed as 30% by the doctors and due to the calcanium fracture, he cannot work as the driver. When there is stress and strain, there will be pain and if there is pain, he cannot drive the vehicle, and therefore, the Commissioner held that as per the medical opinion and also on physical verification, the 1st respondent is not in a position

to drive the heavy vehicle on which he was working at the time of the accident, and also taking the nature of employment into consideration, the Commissioner held that the applicant suffered total disablement and loss of 100% earning capacity.

4. Based upon the oral and documentary evidence and on physical verification, the Commissioner came to the conclusion that though the permanent bodily disability is 30%, but by the said permanent disability of 30%, the 1st respondent became totally disabled to drive the vehicle, and therefore, when he cannot perform the same duties, the total disability and the loss of earning capacity have to be taken as 100%. In support of his conclusion, he relied upon a judgment of this Court in National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another, .

5. The other contention advanced by the learned Counsel for the appellant is that the Commissioner erred in taking the minimum wages as per G.O.Ms.No.71 dated 16-4-1991, even though the 1st respondent was drawing a monthly salary of Rs.800/-as on the date of the accident, and though the 1st respondent is entitled to get the minimum wages at Rs.1215/-, his actual wages shall be taken into consideration for the purpose of calculation. At the time of occurrence of the accident, the 1st respondent is entitled for the minimum wages of Rs.1215/-, but restricted the same to Rs. 1,000/- for the purpose of calculation of compensation. He could not substantiate his contention by citing any of the decisions. When the 1st respondent is entitled to recover the minimum wages as per the Act, the Commissioner has rightly taken into consideration the Government Order, which provides a right to the 1st respondent to recover the minimum wages, and calculated the compensation restricting the wages to Rs.1,000/-. I do not see any merit in the contention of the learned Counsel. The appeal fails and is accordingly dismissed. No costs.