

(2021) 10 TEL CK 0037

In the Telangana High Court

Case No : Civil Miscellaneous Appeal No. 1429 Of 2004

P.Raja Lingam, Nizamabad.

APPELLANT

Vs

Sabnab Parveen And Another

RESPONDENT

Date of Decision : 22-10-2021

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4A

Citation : (2021) 10 TEL CK 0037

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This appeal is filed by the appellant-claimant aggrieved by the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short 'Commissioner') in W.C. No.186 of 2003 in awarding compensation of Rs.85,572/- only as against his claim of Rs.4,00,000/- with interest at 24% per annum for the personal injuries sustained by him during the course of his employment under the Opposite Party No.1 - respondent No.1.

2. The parties are hereinafter referred to as they were arrayed in the WC case.

3. The case of the appellant was that he was working as a cleaner on Lorry bearing No.AHT 9828 under the control of the Opposite Party No.1 and was drawing a salary of Rs.4,000/- per month. On 18.04.2002 at about 11.30 a.m. while he was travelling in the lorry during the course of his employment and when reached Madhapur village, the lorry was driven by its driver in a rash and negligent manner with high speed and the driver lost control over the lorry and hit a cyclist from behind and the lorry turned turtle due to which the appellant sustained fracture injuries to both bones of his left leg and lacerated wound to head and multiple and grievous injuries on various parts of the body. Hence, he filed WC case claiming compensation of Rs.4,00,000/-.

4. The Opposite Party No.1 filed counter admitting the employment, salary and

the accident. She stated that the vehicle was insured with the Opposite Party No.2 and was having valid Insurance Policy and hence, the Opposite Party No.2 alone was liable to pay compensation. The Opposite Party No.2 also filed counter denying the allegations.

5. The appellant examined himself as PW.1 and also examined the Doctor, who issued the disability certificate, as PW.2 and got marked Exs.A1 to A6. The Opposite Party No.1 was examined as RW1. No evidence was adduced by the Opposite Party No.2.

6. On considering the evidence on record, the Commissioner had awarded compensation of Rs.85,572/- holding the Opposite Parties No.1 and 2 jointly and severally liable to pay the same, within (30) days from the date of the order.

7. Not satisfied with the same, the appellant preferred the present appeal seeking enhancement of compensation contending that the Commissioner acted contrary to law and evidence on record and reduced the wages from Rs.4,000/- per month to Rs.1,800/- per month. He further contended that the Commissioner acted contrary to Section 4-A of the Workmen's Compensation Act (for short 'the Act') and failed to award interest at 12% per annum from the date of accident till realization.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent No.2-Insurance company.

9. Learned counsel for the appellant contended that the Commissioner considered the wages as Rs.1,800/- per month though the Opposite Party No.1 admitted the salary of the applicant as Rs.4,000/- per month and also had not awarded interest at 12% per annum contrary to Section 4-A of the Act.

10. Learned counsel for the respondent No.2 contended that the doctor was black listed for giving exaggerated percentage of disability in several cases, the Commissioner considered the wages as Rs.1,800/- per month which were reasonable for the cleaner at the relevant time of the accident in the year 2002, and requested to dismiss the appeal.

11. Perused the record.

12. The record would disclose that the applicant, who was examined as PW.1, stated in his evidence that he was paid a monthly salary of Rs.4,000/- by the Opposite Party No.1. The Opposite Party No.1 was examined as RW.1. She also stated in her evidence that she used to pay an amount of Rs.4,000/- per month as salary to the applicant. Nothing was elicited in their cross examination to disbelieve the said evidence. No rebuttal evidence was adduced by the Opposite Party No.2. However, the Commissioner considered the wages claimed by the applicant at the rate of Rs.4,000/- per month as exaggeration, reduced it to Rs.1,800/- per month. The Commissioner reducing the wages to Rs.1,800/- per month, ignoring the evidence on record, is considered not proper, when there is no contra evidence adduced by the Opposite Party No.2. As such, this Court is of

the considered view that it is a fit case to allow the appeal as the compensation calculated by the Commissioner is erroneous. The loss of earning capacity is to be recalculated as follows: $\text{Rs.4,000/- per month} \times 60/100 \times 226.38 \times 35/100 = \text{Rs.1,90,159.2/-}$ rounded up to Rs.1,90,160/-.

13. Accordingly, the appeal is allowed awarding Rs.1,90,160/-with interest at 12% per annum after one month from the date of the accident till the date of deposit and the Opposite Parties No.1 and 2 are directed to deposit the balance amount of Rs.1,04,588/-(Rs.1,90,160/- minus Rs.85,572/-) within one month from the date of receipt of a copy of this judgment. No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.