
(2000) 11 AP CK 0074
In the Andhra Pradesh High Court
Case No : C.M.A. No. 316 of 1997

Rayapati Venkateswara Rao

APPELLANT

Vs

Mantai Sambasiva Rao and Another

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (2001) 2 ACC 300 : (2001) ACJ 2105 : (2001) 1 ALT 169 : (2002) 4 LLJ 339

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.V. Ramana, J.—The appellant-applicant filed this appeal being aggrieved by the order dated February 20, 1996 passed by the Commissioner for Workmen's Compensation, I Circle, Guntur in W.C. No. 8/1995 which was filed by the applicant claiming an amount of Rs. 1,15,000/-towards compensation for the injuries sustained by him in a motor vehicle accident occurred on December 18, 1994 during course of his employment. The brief facts of the case are as follows:

The applicant was working as cleaner on the lorry AAE 7999 owned by the Opposite Party-I, that on December 18, 1994 while the applicant during course of his employment was proceeding in the lorry AAE 7999, the driver of the vehicle drove at high speed in a rash and negligent manner and without taking proper care and as a result the brakes of the lorry failed and the lorry turned turtle and the applicant received grievous injuries to his right leg and operations were conducted on his right leg and steel rods were inserted and he underwent treatment as an inpatient for 15 days and he became disabled permanently and he lost his earning capacity. Prior to his accident he was earning Rs. 1,000/- p.m., as salary and Rs. 300/- p.m., as batta. Thus the applicant filed the O.P. claiming an amount of Rs. 1,15,000/-, towards compensation. The Tribunal on" appreciation of both oral and documentary evidence adduced came to the

conclusion that the applicant sustained 20 to 25% physical disability and he assessed the loss of earning capacity of the applicant at 70% due to the deformity and also fixed the monthly wages at Rs. 983/- and thus awarded an amount of Rs. 78,842.00 towards compensation. Questioning the same, the applicant filed this appeal, seeking enhancement.

2. Learned counsel for the appellant-applicant contended that the learned Commissioner erred in awarding the total compensation and he read-out the evidence of A.W. 1 the workman as well as A.W.2 the Orthopaedic Surgeon who treated the applicant. He contended that because of the accident the applicant has suffered major fracture to his right tibia and the Doctor A.W. 2 operated him. It is the evidence of A.W. 2 that the appellant suffered 20 to 25% physical disability and because of the restriction of ankle movement, the applicant is unable to discharge the duties of a cleaner and it is a compound fracture and the learned Commissioner also examined the applicant in the open Court and opined that the applicant sustained compound fracture to his right leg in the accident and operation was conducted and steel rods were inserted and there is a malunion of fracture and slight deformity and hence assessed the loss of earning capacity at 70%. Learned counsel for the appellant further contended that when once the Commissioner found that the appellant suffered injury and was unable to perform the duties which he used to perform on the date of the accident, it amounts to 100% loss of earning capacity and accordingly he should be paid full compensation and from the evidence of A.W.2 it is clear that the applicant cannot perform the duties of a cleaner and, he has to walk with a stick and hence the applicant is entitled for 100% compensation. In support of his contentions he placed reliance on a decision of the Supreme Court reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and also relied on decisions of this Court reported in National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another, , Janatha Modern Rice Mills v. G. Satyanarayana 1996 III LLJ 923 (AP) and New India Assurance Co. Ltd. Vs. Kotam Appa Rao and Another, . Further, he placed reliance on another Judgment of a learned single Judge of this Court in C.M.A. No. 144/1994, dated July 23, 1999.

3. On the other hand it is contended by the learned counsel for the respondents. Insurance Company that there is no proper assessment by the doctor about the physical deformity sustained by the applicant and he can do any other job and there is no reason to interfere with the compensation awarded by the Commissioner.

4. Perused the impugned order and the various Judgments of the Hon''ble Supreme Court as well as this Court.

5. In Pratap Narain Singh's case the Hon''ble Supreme Court while dealing with the provisions of Section 2(1)(l) and (g) of the Workmen's Compensation Act held that the applicant's disability is total and not partial. In that case a carpenter was injured during the course of employment and because of the accident, his left hand was amputated and it is found that because of the

amputation he cannot perform his duties as a carpenter and the Supreme Court held that the disability of the workman, therein is 100%.

6. In *National Insurance Company Ltd., v. Mohd. Saleem Khan* (supra), a learned single Judge of this Court after considering the multiple injuries sustained by a truck driver in an accident during the course of his employment held that the truck driver who is capable of performing the duties on the date of accident cannot perform the same duties subsequently because of the accident and the work which he was capable of performing by the date of accident is material and not that whether he is capable enough to do some other work in spite of the injuries sustained.

7. In *Janatha Modern Rice Mill's case* (supra), another learned single Judge of this Court while dealing with Section 2(1)(g) and (1) of Workmen's Compensation Act held that the workman has lost his earning capacity and thus he is entitled for 100% compensation. In that case, the workman is a helper in a rice mill and his left hand was amputated due to the accident during course of his employment and according to the medical evidence he lost 60% of earning capacity, but the Commissioner therein granted 100% compensation for permanent disability. While considering this issue the learned single Judge of this Court held that the workman therein is entitled to 100% compensation.

8. In *New India Assurance Co., Ltd. v. K. Appa Rao* (supra) a learned single Judge of this Court while considering a similar case observed as follows:

"The permanent partial disablement suffered by the 1st respondent is not by virtue of an injury specified in Para-II of Schedule I to the Act. In view of the observation of the Doctor that the 1st respondent would not be able to drive vehicles, the Commissioner could have held that disablement in the present case was total in view of the definition of total disablement in Clause (1) of Sub-section (1) of Section 2 of the Workmen's Compensation Act."

9. In another Judgment of this Court in C.M.A. 144/1994, a learned single Judge of this Court has also taken the same view in a similar set of facts and circumstances.

10. In the instant case, from the impugned order as well as the documents on record it is very much clear that the applicant sustained compound fracture and the doctor A.W.2 who treated the applicant clearly studied that the appellant sustained 20 to 25% physical disability and in the cross-examination also his evidence is unshaken. The age of the claimant is 18 years by the date of accident. According to the medical evidence, the applicant cannot perform his duties as a cleaner as he was performing prior to the accident and he has to use a stick to walk. So it is very clear from the evidence and findings of the learned Commissioner that the appellant cannot perform his duties as a cleaner as he was performing on the day of accident and as per the settled legal position as extracted above, it has to be held that when once the workman was incapacitated and unable to perform his duties what he is performing on the day

of accident, even though the physical disability sustained is 20 to 25% he loses his earning capacity by 100%.

11. So following the decisions cited supra and in view of the fact that the applicant cannot perform the same duties as he was performing on the date of accident, I am inclined to hold that the applicant lost his 100% earning capacity and he is entitled for 100% compensation.

12. The age of the applicant was 18 years as on the date of accident and as per Schedule IV of Workmen's Compensation Act, the relevant factor applicable is 226.38. If we take the monthly wages of the workman as Rs. 983/- and the loss of earning capacity as 100%, the revised calculation would be 50% of Wages x relevant factor x loss of earning capacity i.e., $491.50 \times 226.38 \times 100 = 1,11,265/-$

13. Thus the appellant-workman is entitled for an amount of Rs. 1,11,265/- towards compensation besides an amount of Rs. 156-00 towards stamp duty awarded by the Commissioner below and in all the appellant-workman is entitled for an amount of Rs. 1,11,421/-.

14. Accordingly, the appeal is allowed and the impugned order is modified enhancing the compensation awarded by the Commissioner below, from Rs. 78,042/- to Rs. 1,11,421/-fixing the liability jointly and severally both on the owner of the vehicle as well as the Insurance Company. No order as to costs.