
(2011) 12 AP CK 0065
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3599 of 2004

The National Insurance Company Ltd.	APPELLANT
Vs	
Balaji Sharma and another	RESPONDENT

Date of Decision : 03-12-2011

Acts Referred:

Citation : (2013) ACJ 524 : (2012) 2 ALD 56 : (2012) 2 ALT 436 : (2012) 133 FLR 1020 : (2012) 4 LLJ 194

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S.A.V. Ratnam, for the Appellant; B. Parameswara Rao for Respondent No. 1 and None, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy

1. The first respondent was working as a driver on a tempo bearing No. AP 10U 4298 owned by the second respondent and insured with the appellant. On 05.09.2002, an accident occurred when he was proceeding from Hyderabad to Pune and the same resulted in injury to his left hand. He was initially treated at Government Hospital Danud, Maharastra and subsequently, in the Gandhi Hospital, Hyderabad. Cr.No.982 of 2002 was registered by the concerned police station.

2. First respondent filed W.C. Case No.152 of 2003 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I (for short "the Commissioner") claiming Rs.4,39,221.90 as compensation. He pleaded that the second respondent was paying him salary of Rs.3,175/-per month and batta of Rs.50/-per day and that his age was 25 years at that time. It was urged that he became totally disabled from discharging the functions of the driver and that he suffered 100% disability.

3. The second respondent filed counter admitting the fact that the first

respondent is employed with it as a driver and that the accident has occurred. However, it denied the liability to pay compensation on the ground that the vehicle was insured with the appellant. The appellant filed a separate counter denying the allegations made in the claim petition. It has put the first respondent to strict proof of the facts pleaded by him. The ownership of the vehicle with the second respondent is also disputed.

4. Through order dated 16.06.2004, the Commissioner awarded a sum of Rs.4,03,646/- with statutory interest. The appellant challenges the same. The principal contention raised by them is that though the disability was certified to be at 55% by AW3, the Commissioner has taken the same to be at 100%. Other grounds are also urged.

5. Heard Smt. S.A.V.Ratnam, learned counsel for the appellant and Sri B. Parameswara Rao, learned counsel for the first respondent.

6. The appellant no doubt has disputed the very occurrence of the accident and the relationship of employee and employer, between respondents one and two. The oral evidence adduced on behalf of the first respondent comprised of the depositions of AWs 1 to 3. The documentary evidence comprised of Exs. A1 to A10. No oral evidence was adduced by the appellant and the copy of the Insurance Policy was marked as Ex.B1. The second respondent admitted that the first respondent was working with him as driver. By filing the F.I.R. and other related documents, the first respondent proved beyond any doubt, that he was employed with the second respondent and that the accident occurred on 05.09.2002. The appellant is not able to show as to how the finding recorded by the Commissioner in this regard is erroneous.

7. Strong exception is taken to the quantum of compensation awarded by the Commissioner. The first respondent suffered injuries to his left hand. AW3, the doctor who certified the disability of the first respondent stated that the disability is to the extent of 55%. On the basis of the statement of AW3 that the first respondent is unfit to discharge the functions of a driver, the Commissioner took the disability at 100%.

8. One of the vexed questions that arise in the claims filed under the Workmen's Compensation Act, 1923 is the one, pertaining to the disability suffered by a workman and its impact upon his earning capacity. While in some cases, the impact of the injury upon the ability of the injured, to discharge the same functions which he was discharging earlier, is taken as the basis; in other cases, the percentage of disability whether on the basis of the figures furnished in the schedule or the one certified by the doctor is treated as final, irrespective of its impact upon the employment and functions of the workman. Though there is lack of uniformity in the judgments rendered by the High Courts, the view taken by the Supreme Court appears to be the one in favour of the percentage of the disability, irrespective of its impact upon the employment.

9. Take for instance a case where the workman suffered the injury of loss of

three fingers of one hand. That injury is dealt with at item 8 of part-II of Schedule-I and percentage of loss of earning capacity on account of that injury is shown as 30%. In certain cases, loss of three fingers may result in total disablement, such as in the case of a typist or a T.V. or Radio mechanic, where loss of three fingers may lead to 100% disability. Conversely, amputation of both the feet occurring at item No.11 of Part-II of Schedule-I is shown to be resulting in loss of 90% of earning capacity. However, amputation of the feet for a workman who is engaged as a typist or a T.V. mechanic may not have any impact upon his ordinary functions at all. On that count, he cannot be denied compensation. The attempt is only to emphasize that the percentage of loss of earning capacity whether, as indicated in the schedule, or as certified by the medical practitioner; would constitute the basis, irrespective of its impact on the duties, which the workman was discharging before the accident. This view is supported by the judgments of the Supreme Court in *Oriental Insurance Co. Ltd. v. Mohd. Nasir and Anr.* AIR 2009 SC (Supp) 1619 and *Sunil Kumar v. Ram Singh Gaud & Ors.* 2008 (1) ACJ 9 (SC).

10. Therefore, the Commissioner in the instant case ought to have confined the compensation by taking the disability at 55% as certified by AW3 and not at 100%. The age of the first respondent was taken as 26 years for which the factor is 215.28. His wages were taken at Rs.3111/-per month. If 55% is taken as loss of earning capacity, the compensation that can be awarded would be Rs.2,21,012.90. The Commissioner awarded a sum of Rs.1000/-as costs and Rs.804 as stamp duty. Then the total compensation would be Rs.2,22,816.90.

11. The appeal is partly allowed to the extent indicated above. There shall be no order as to costs.