

(2004) 09 AP CK 0119

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 3004 of 2004 and Cross Objections No. 52328 of 2004

The New India Assurance Co. Ltd.

APPELLANT

Vs

Imtiaz Ahamed and Another

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 337
Workmens Compensation Act, 1923 — Section 2, 4

Citation : (2005) 2 ACC 740 : (2005) 1 ALT 637

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : I. Maamu Vani, for the Appellant; K.M. Mahender Reddy, for the Respondent

Judgement

Elipe Dharma Rao, J.—Both the Civil Miscellaneous Appeal and Cross-Objections are directed against the order, dated 18.12.2001 in W.C.No.43 of 2000 (NF), on the file of the Commissioner, Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad (for short "Labour Court").

2. Brief facts of the case are that the claimant is driver under the 2nd respondent. On 2.11.1998 while the claimant was proceeding with the lorry bearing No.GRR-4768 from Ramapuram to Karimnagar, and when he reached outskirts of Pullur village, at about 9 p.m., he could not control his vehicle, as a result of which, the lorry turned turtle and he sustained fracture to his right hand and finger, injuries to his head and all over his body. The Police of Manpadu registered a case in Crime No.82/1998 u/s 337 of the Indian Penal Code. The injured was shifted to the Kurnool Government Hospital and was treated for three days. He spent Rs.40,000/- for medical expenditure. The injured is aged about 28 years and is earning Rs.4,000/- per month by the time of accident. Therefore, he filed application before the Labour Court claiming compensation of Rs.2,00,000/- from the Insurance Company, who is the appellant herein and the 2nd respondent.

3. In support of his claim, the claimant examined himself as PW 1 and got examined Dr.L.Ramulu as PW 2 to prove his injuries and marked Exs.A1 to A10 on his behalf. No oral or documentary evidence is adduced on behalf of respondents therein.

4. On appreciation of both oral and documentary evidence, the Labour Court held that the claimant met with the accident and sustained injuries while he was on duty under 1st respondent therein. Finding that there was 40% permanent partial disability, the Labour Court granted compensation of Rs.1,01,659/- payable by the respondents therein.

5. Assailing the order of the Labour Court, the Insurance Company, who is 2nd respondent in WC.No.42/2000 (NF), filed this appeal contending that the Labour Court erred in fixing the salary of the claimant at Rs.2,000/- without there being any proof about the salary of the claimant/driver. He further contends that the accident occurred due to rash and negligent driving of the claimant and hence the Insurance Company is not liable to pay any compensation.

6. On the other hand, the claimant filed cross objections contending that the Labour Court acted contrary to law and contrary to Sec.2(i) and 4(c) of the Workmen Compensation Act and he sought for enhancement of compensation.

7. The leaned counsel for the Appellant/Insurance Company, while addressing the arguments, drew the attention of this Court to the oral and documentary evidence adduced by the claimant in the Labour Court. There is contradiction and inconsistency in the evidence with regard to the injuries sustained by the claimant. The appellant also drew my attention in respect of the certificate issued by the Government Hospital, Kurnool. At the first instance, the claimant was admitted in the Hospital immediately after the accident, wherein it was noticed that there are three injuries on the body of the claimant. The first injury is a lacerated wound over the base of right ring finger. There are two more injuries, which are simple in nature.

8. When the claimant approached Dr.L.Ramulu, he advised him to come to the hospital once in a week for check-up and treatment as he sustained fracture on right fingers and sustained injuries on his backside near hip region. But, he has forgotten to mention the fracture to his right hand, which was stated in his claim petition.

9. Coming to the evidence of PW 2, the Doctor, who treated the claimant and gave Ex.A7 certificate and assessed the permanent partial disability as 40%, deposed that the injury is on the right hand index finger, contrary to his certificate whereas it was mentioned that the injury is on right hand ring finger.

10. Therefore, in view of the above, nothing was stated about the fracture to his right hand. In those circumstances, it is submitted that there is inconsistency and contradictory statements with regard to the injuries sustained by the claimant. Therefore, the Labour Court should not entertain the claim petition

itself.

11. Having heard the learned counsel on either side and on perusal of the material on record, it is seen that as per the certificate issued by the Government Hospital, Kurnool, the claimant sustained injury to his right hand ring finger and two other abrasions, which are simple in nature. But in the claim petition, the claimant mentioned that the fracture is to his right hand ring finger. But no evidence is adduced to that effect. The Doctor's evidence is also inconsistent with regard to the said fact. In the certificate, Ex.A7, issued by him, it was mentioned that the injury is to the ring finger, but in his evidence he deposed that the injury is to the index finger. Therefore, there is variation with regard to the said injury. The Court below also has lost sight of this variation and inconsistent evidence. The Court below, taking into consideration the evidence on record, though there is variation and inconsistency in the evidence of the Doctor, PW 2, found that there was 40% disability, and awarded compensation. Therefore, in view of inconsistent and contradictory statements of the claimant and Doctor, and non-application of mind by the Court below, I am unable to confirm the award passed by the Court below.

12. At the time of admission of this Appeal, this Court directed the appellant to deposit 50% of compensation, awarded by the Labour Court. The Appellant had deposited the same and the claimant already withdrew the said amount with the permission of this Court.

13. Though, I am of the view that the Award under the appeal is liable to be set aside, since the claimant already withdrew 50% of the amount awarded, which was deposited by the appellant as per interim direction of this Court, the Award is set aside for the balance amount. Further, since the Award is set aside for the balance amount, question of enhancing the compensation amount, in the Cross-objections filed by the Claimant, does not arise. Accordingly, the Cross-objections are dismissed.

14. After going through the medical certificates and the wound certificates issued by Dr.L.Ramulu, Orthopedic and M.S.Surgeon, Nizamabad and considering the evidence of the said doctor, adduced during the course of trial, not only in this case but also other cases, I am of the considered view that both the claimant and the said Doctor have opted to misuse the power vested in the Commissioner for Workmen Compensation Act under Sec. 2(1) and 4 (c). Thus it appears they have followed the said Rule more by way of breach. Initially, in fact, this court thought of entrusting such of those disposed off cases, where Mr.L.Ramulu, Orthopedic and M.S.Surgeon, Nizamabad, has issued wound certificate and certificate of disability, to refer to any Investigating Agency for a detailed probe and to the Medical Council, New Delhi, for cancellation of his registration, but in the interest of victims of the accident, this Court thought it suffice to treat the wound certificates and disability certificates issued by Dr.L.Ramulu, Orthopedic and M.S.Surgeon, Nizamabad, as a nullity.

15. In that premise of the issue, the Registrar (Judicial) is directed to communicate these findings to the Chairmen of Motor Accident Claims Tribunal and Commissioner for Workmen Compensation and Assistant Commissioner of Labour, dealing with the award of compensation in the State of Andhra Pradesh, not to act upon such certificates and his oral testimony in this regard. They are, however, at liberty to determine the percentage of disability independently depending upon the gravity of accident and the evidence adduced on that score.