
(2013) 04 AP CK 0041

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 3367 of 2001

The New India Assurance Co. Ltd.

APPELLANT

Vs

Khaja Moinuddin and Mohammad Taher Ali

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)(i), 4, 4(1)(c), 4(c)(ii)

Citation : (2013) 5 ALD 427

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : C. Prakash Reddy, for the Appellant; Janardhan Reddy for Respondent No. 1 and disd for default, for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—This appeal is filed by New India Assurance Company aggrieved by the compensation awarded by the Commissioner for Workmen's Compensation, Nizamabad dated 25.9.2001 in W.C No. 15 of 1998. First respondent herein/applicant in the W.C No. 15 of 1998 was employed as a cleaner in a goods motor vehicle bearing registration No. AP 09T 6255, owned by second respondent/Opposite Party No. 1 in the W.C No. 15 of 1998. The motor transport vehicle is insured with New India Assurance Company Limited, appellant herein/Opposite Party No. 2. The parties herein are referred to as described in W.C No. 15 of 1998. The motor transport vehicle met with an accident on 07-08-1997, resulting in injuries to applicant. The applicant sustained fracture of left hand, injuries to head, legs and other parts of the body. He was immediately shifted to Government Hospital, Nizamabad and there after he continued to take treatment in the private hospitals.

2. Since no compensation was paid to him, he filed complaint before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, (for short referred to as the Commissioner) which is numbered as W.C. No. 15 of 1998 (NF). The applicant claimed compensation of

Rs. 1,80,000/- with interest @ 24% per annum. The owner of the vehicle was set ex parte.

3. The Commissioner framed four issues for consideration. Insofar as this appeal is concerned, issue No. 3 is relevant, which reads as:

What is the percentage of disability incurred by the applicant and the impact of the disability on the earnings of the Applicant?

4. Applicant claimed that he was paid Rs. 2,500/- as salary and Rs. 60/- per day as batta. In the cross-examination on behalf of the Insurance Company, he denied the suggestion that he was paid only Rs. 900/- per month and that he received only simple injuries and he denied the suggestion that he can do all sorts of work.

5. Dr. L. Ramulu, Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad, was examined as witness No. 2. He deposed that he has examined the applicant on 09-02-2001 clinically and physically and based on the medical records certified that the disability with which the individual was suffering amounts to 80%. The doctor deposed that he found mal-united fracture of shaft humerus right, post traumatic stiffness to shoulder and elbow with multiple soft tissue injuries. The doctor deposed that the applicant cannot do hard work in view of the nature of injuries caused to him. In the cross examination he stood by his statement and justified certificate issued by him showing the disability as 80%. No contra evidence is brought on record by the opposite parties to disprove the nature of injuries suffered and the percentage of disability.

6. On consideration of the evidence on record, the Commissioner has held that the applicant is a workman and met with an accident while on duty with the employer. With reference to quantum of compensation, the Commissioner described the disability suffered by the individual as 80% as certified by the doctor and arrived at monthly salary as Rs. 1,800/-. Accordingly, he has determined Rs. 1,79,695/- as the compensation payable to the applicant. No interest is awarded as claimed by the applicant.

7. The only contention urged by the learned counsel for the appellant/Opposite Party No. 2 is that the doctor, who issued the disability certificate was not the Doctor who has examined the applicant and treated him initially, and therefore no credence can be given to such certificate.

8. Thus, the issue for consideration is whether the assessment of disability and the certificate issued by a medical officer who has not treated the employee is not valid to determine the nature of injury and the loss of earning capacity.

9. Section 4 of the Workmen's Compensation Act, 1923 prescribes assessment in cases of death, total disablement, permanent, partial disablement. Insofar as this case is concerned, para "C" of Table u/s 4 of the Act, applies which reads as under:

(c) Where permanent/partial disablement results from the injury;

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement, as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation II appended to Section 4 of the Act, reads as under:

Explanation II: In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity, in relation to different injuries specified in Schedule I;

10. The above provision makes it clear that it is not necessary that assessment of disability and loss of earning capacity should be issued by the same Medical Officer, who attended the employee while treating him on the injuries caused to him. The section mandates such assessment only by a qualified medical practitioner.

11. In Charan Singh Vs. G. Vittal Reddy and Another, an identical issue has fallen for consideration before this court. Interpreting the relevant provisions of the Workmen's Compensation Act, 1923, a Division Bench of this Court held as under:

13. It is also pertinent to state that the Workmen's Compensation Act is a beneficial piece of legislation conceived in the interest of the workmen, who are the victims of accidents arising out of and in the course of employment and the Act provides for cheaper and quicker disposal relating to compensation through Special Tribunals. The procedure is contemplated under part -V of the Act and the Rules framed thereunder are summary in nature. The Commissioner while passing the Orders shall record concisely a judgment, giving findings on each issue and reasons for such finding. Under Schedule-I, a legal fiction is created by the Legislature wherein injuries referred to in the said Schedule are deemed to result in permanent disablement vis-?-vis the percentage of loss of earning capacity. Thus, the statute itself simplified the process of calculation of loss of earning capacity with reference to the scheduled injuries. While, in case of non-scheduled injuries resulting in permanent partial or total disablement, the assessment by qualified Medical Practitioner is necessary as required u/s 4(c)(ii) of the Act. The words "Qualified Medical Practitioner" is also defined u/s 2(1)(i) which means "any person registered under any Central Act, Provincial Act or any Act of the Legislature of a State providing for the maintenance of a register of medical practitioners, or, in any area where no such last mentioned Act is in

force, any person declared by the State Government, by notification in the Official Gazette, to be a qualified medical practitioner for the purpose of this Act.

14. Thus, when the Section is very clear and specific regarding the assessment to be made by a qualified medical practitioner, there is no reason to import additional meaning so as to mean that the qualified medical practitioner should be one, who has treated the injured workman. A provision in a beneficial piece of legislation has to be interpreted in such a way as to assure the benefit and not to deny the benefit that is sought to be conferred by statute. Thus, if Section 4 is read with reference to Schedule-I, the inevitable conclusion is that in case of non-scheduled injuries, the percentage of total disablement as is proportionate to the loss earning capacity has to be assessed by the qualified medical practitioner and it is not necessary that the Doctor, who treated the workman should be the only assessing authority. It is also not in dispute that the doctor, who was examined before the Commissioner fell within the definition of qualified medical practitioner.

15. Under those circumstances, we are of the considered view that Section 4(1) (c) does not stipulate a requirement of assessment by the medical practitioner who had treated the workmen concerned at the first instance. It is always open for the qualified medical practitioner to assess the loss of disability vis-?-vis loss of earning capacity with reference to the injuries sustained by him and if the employer or the Insurance Company was not satisfied with the assessment made by the medical practitioner, whose evidence was produced, contra evidence ought to have been adduced by the Insurance Company to rebut or impeach the evidence of the medical officer adduced on behalf of the workmen. In the absence of such evidence, we cannot find fault with the order of the learned Commissioner.

12. There is no serious dispute on the evidence given by the Medical Officer except contending that the doctor who has originally treated the individual was not examined. However, it has to be seen that the individual has suffered physical injuries and his ability to work normally can be assessed later also. Thus, the certificate issued by the Medical Officer cannot be discarded, more particularly when there is no contra evidence to show that the individual was not suffering with the same amount of disability and loss of earning capacity as certified by the doctor and deposed during the course of adjudication.

13. In view of the statutory mandate and the law declared by Division Bench of this Court in Charan Singh case, the contention of the appellant that only the medical officer who has examined the employee alone has to issue certificate of disability and the loss of earning capacity is rejected. Therefore, I see no merit in the contentions of the appellant and the appeal is dismissed. Sequel to the same the miscellaneous petition in C.M.P. No. 25264 of 2001 stands closed. No costs.