
(2010) 07 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 674 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Mr. Akbar Khan and Mr. Shabeer Khan

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 337, 4

Citation : (2010) 07 AP CK 0018

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Judgement

Ghulam Mohammed, J.—United Insurance Company is the Appellant who filed the appeal challenging the award and decree passed in WC No. 55 of 2002 dated 22.12.2003 on the file of the Commissioner for Workmens" Compensation and Assistant Commissioner of Labour-III, Hyderabad, in granting compensation of Rs. 4,20,345/- for the injuries suffered by the claimant.

2. The brief facts of the case are as follows:

The claimant stated that he was employed as driver on the lorry bearing No. AP 13 T 3801 in the first Respondent and is a workman within the meaning of the Act. On 20.2.2002 while he was proceeding as driver on the said lorry from Thandur to wards Hyderabad with load of Thandur stones in the lorry and on reaching near Yenkepally gate, at Culvert No. 211, a RTC Bus bearing No. AP 10Z 4478 coming from opposite direction being driven by its driver in a rash and negligent manner dashed against his lorry resulting which, the applicant received grievous injuries and was shifted to Osmania General Hospital, Hyderabad for treatment and the applicant received fracture of right leg both bones, amputation of left leg big toe and other grievous injuries. The police at Vikarabad Police Station registered a case in Crime No. 30 of 2002 u/s 337 of IPC. The applicant stated that the said accident occurred out of and during the course of employment. He stated that he was drawing wages of Rs. 4,000/- per month and he was aged about 22 years at the time of accident. Therefore, he claimed Rs.

5,00,000/- as lump sum compensation against the first Respondent-owner of the lorry and also against the second Respondent-Insurance Company.

3. The first Respondent-owner of the lorry bearing No. AP 13 T 3801 admitted that the applicant was employed by him about one month prior to the accident and the accident occurred on 20.2.2002 and the applicant was aged 22 years and he is aware of the accident and visited the applicant and he stated that the lorry was insured with the second Respondent-Insurance Company.

4. The Second Respondent-Insurance Company filed its counter denying the averments in the petition and submitted that the applicant was not employed by the first Respondent-owner of the lorry, to drive the vehicle. It is also stated that the owner of the RTC bus is a necessary party for the proceedings and it is stated that the Insurance Company was neither informed by the applicant nor by the first Respondent, which indicates clear collusion between them to cause loss to the Insurance Company and the amount claimed is also excessive, exorbitant.

5. On behalf of claimants, he himself examined as AW-1 and Exs. A1 to A8 were marked. On behalf of Respondents none were examined but Ex. D1 insurance policy was marked.

6. On the basis of the above pleadings, the following issues were settled for trial.

1. Whether the applicant Sri Akbar Khan met with an accident on 20.2.2002 while he was driving the vehicle bearing No. AP 13 T 3801 in the employment of first opposite party as driver and sustained injuries in the accident which arose out of an in the course of his employment?

2. If yes, what is the percentage of physical disability and the consequent loss of earning capacity?

3. who are liable to pay compensation to the applicant? And

4. what is the amount of compensation entitled by the applicant.

7. On consideration of the oral and documentary evidence, the Commissioner came to the conclusion that since the accident occurred due to rash and negligent driving of the driver of the accident lorry, the Respondents 1 and 2 being owner and insurer respectively of the lorry, are jointly and severally liable to pay the compensation to the claimant. In order to determine the compensation, the Commissioner taken into consideration the G.O. Ms. No. 30 LET & F (Lab II) dated 27.7.2000 wherein the Government of Andhra Pradesh has fixed the Minimum Rates of Wages, for employees working in the employment of public motor transport and for a basic wage for a driver of heavy goods vehicle is Rs. 2,587/- and VDA payable as notified by the Commissioner of Labour from time to time is Rs. 588/- fixed the total wage amounting to Rs. 3,175/- for calculating the amount of compensation. Accordingly, the amount of compensation entitled by the applicant is Rs. 4,19,005/- (Rs. 3175 x 60/100 x 219.95). The Commissioner also granted Rs. 840 towards stamp fee and Rs.

500/- towards advocate fee totaling to Rs. 4,20,345/- payable by the first and second Respondents. Aggrieved by the same, the present CMA has been filed by the Insurance Company.

8. The learned Counsel appearing for the Appellant-Insurance Company contended that the Commissioner enhanced the loss of earnings to 100% without any basis and the Commissioner committed a serious error in overlooking the fact that when both the doctors AW-2 and RW-1 observed that the claimant can drive the vehicle, the Commissioner on a fallacious grounds made the loss of earning capacity to 100%. He also submits that the disability certificate issued by the doctor does not satisfy the requirement of Section 4(c) (ii) and cannot be acted upon and in the absence of disability, the claimant is not entitled to any compensation.

9. The point that arises for consideration is whether the compensation awarded by the Commissioner granting a total sum of Rs. 4,20,345/- is just and proper?

10. As seen from the record, it is no doubt true that the accident occurred due to rash and negligent driving of the driver of the accident lorry, the first Respondent and the Appellant herein, being owner and insurer respectively of the lorry are jointly and severally liable to pay the compensation to the claimant. It is also no doubt true that the deceased was working as driver on the lorry and getting salary of Rs. 4,000/- per month. It is no doubt true that the certified copy of wound certificate also reveals that the applicant received injuries in the accident that occurred on 20.2.2002. Ex. A3 shows that the applicant was admitted in the Osmania General Hospital, Hyderabad on 21.2.2002 and he was operated on the same day and his left big toe was amputated and the injuries recorded in the discharge card issued by the Osmania General Hospital, Hyderabad are the same injuries which were accepted by both doctors AW-2 and RW-1. But the doctor who treated the claimant assessed the disability of the applicant at 40% while the doctor examined on behalf of the second Respondent-Insurance Company assessed it around 25% to 30% and both the doctors opined that it will be difficult for the applicant to drive a vehicle with these injuries. But the Commissioner wrongly taken the loss of earning capacity as 100%. Hence, loss of earning capacity should be taken as 40% and the Commissioner for the purpose of calculation taken the wages of the claimant at Rs. 3,175/- out of that the disability of 40% if deducted, the net amount comes to Rs. 1,270/- ($3,175 \times 40/100$). The total amount entitled by the claimant comes to Rs. 1,67,602/- ($1,270 \times 60/100 \times 219.95$).

11. Accordingly, the Civil Miscellaneous Appeal is allowed in part reducing the amount of compensation granted by the Commissioner from Rs. 4,20,345/- to Rs. 1,67,602/-. However, the amount already withdrawn by the claimant cannot be recovered. There shall be no order as to costs.

12. As far as the rate of interest is concerned, counsel appearing for the Appellant contended that the rate of interest granted by the Tribunal at 9% per

annum, from the date of petition till the date of payment is on high side and requested to reduce the same.

13. Taking into consideration catena of Supreme Court Judgments and also the prevailing current rate of interest, the rate of interest granted by the Tribunal at 9% per annum is reduced to 7% per annum.

14. Accordingly, the appeal filed by the Insurance Company is allowed in part. There shall be no order as to costs.