



IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

Civil Miscellaneous Appeal No.508 of 2010

Between

N RAMANJANEYULU AND ANOTHER
S/o N Balanna S C Colony Chandana
Village Yadiki Mandal Ananthapur district

... Appellant

Vs.

K Narayanaswamy, S/o K Govindappa
owner of the VAN AP02U5146 S L V Fertilizer Near RTC Bus Stand Rayalacheruvu
Village Yadiki Mandal Ananthapur District

... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.03.2023

HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reports/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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! Counsel for the petitioner : Sri Kota Subba Rao

^Counsel for respondents : Sri N. Ramanjaneyulu

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➤ Head Note:

?CASES REFERRED:

- 1) 2019 13 SCC 806
- 2) (2022) 2 AIR Bombay R 49



HONOURABLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Civil Miscellaneous Appeal No.508 of 2010

Judgment:

1. This Civil Miscellaneous Appeal is preferred against the impugned order dated 18.03.2010 in W.C.No.10 of 2006 on the file of the Commissioner for Workmen's Compensation-cum-Assistant Commissioner of Labour, Ananthapur.

2. Appellant herein is the Opposite Party No.2.Respondent Nos., 1 and 2 herein are the applicant and Opposite Party No.1 before the learned Commissioner. For the sake of convenience, the parties will be referred to as they are arrayed before the learned Commissioner.

Brief Facts of the case:

3. Applicant approached Commissioner seeking compensation of Rs.3,00,000/- against Opposite Parties 1 and 2, stating that he met with an accident on 22.12.2004 at about 1.00P.M., during the course of his employment.



Applicant worked as driver of Elcher Van bearing No.AP-02-U-5146 under Opposite Party No.1.On 20.12.2004 at about 1.00P.M.,during the course of his employment, the applicant was driving the van and when it reached near Garladinne Bus stand, dashed against a bus in attempt to avoid an accident with auto, as a result of which he sustained fracture of tibia and fibula right leg and fracture on left thigh and received multiple injuries. Immediately, he was taken to Government Hospital, Ananthapur and took treatment for more than one year. Being an inpatient under the treatment of specialised doctors, he was advised to take bed rest at home by following medication. Applicant was aged about 27 years and he was getting monthly salary of Rs.4,000/- and claimed compensation of Rs.3,00,000/-.

4. Having heard both the counsel and on appreciation of evidence on record, the learned Commissioner awarded compensation of Rs.2,78,102/-.



5. Feeling aggrieved by the impugned order, the Opposite Party No.2 preferred the present appeal on the ground that the learned Commissioner failed to see that the driver had no valid and effective licence and a subsequent renewal does not cure the defect. Opposite Party No.2 further contended that the appellant is not liable to pay compensation under Section 149 of the Motor Vehicles Act and that the learned Commissioner ignored the fact that though there is evidence that the disability and loss of earning capacity is 30%, he fixed it at 75% and thereby exceeded his power under Section 4 Explanation II (ii) of the Workmen's Compensation Act. The further contention is that the award is not in accordance with Section 4 Schedule-II (ii) of the Workmen's Compensation Act. Though the insured has violated the terms of the policy, the compensation was awarded.

6. Heard the learned counsel on both sides and perused the material on record.



7. Though the learned counsel for the appellant did not frame substantial questions of law in the Memo of Appeal, it appears that they intend to challenge the impugned order on the point that when the driver had no valid licence, there cannot be any liability to the insurance company and that a subsequent renewal of the driving licence does not cure the defect. Another point being as to assessing the disability at 75% though the medical record shows that it is 30%.

Existence of valid and effective license:

8. The main attack against the impugned order is that the driver had no valid and effective licence as on the date of the accident. The vehicle involved in the present case is Elcher van bearing No.AP-02-U-5146. Opposite Party No.1 did not choose to appear before the learned Commissioner in spite of receiving notice and he was set *ex parte*. Opposite Party No.2/insurance company raised all objections before the learned Commissioner and also before this Court.



9. The preliminary contention of the Opposite Party No.2 is that the applicant has to prove that he was a driver under Opposite Party No.1. Needless to say, the owner is the best person to answer about the the status of the applicant as driver The owner did not choose to contest the matter to deny the capacity of applicant as driver. It can be considered that the owner has no objection against the claim of the applicant. Apart from the evidence of AW.1, Ex.A.1 would show that the matter is forthwith reported to the police after the accident. After due investigation, the police laid charge sheet vide Ex.A.2. In addition to that, Ex.B.2 the driving licence of the applicant is also filed on behalf of Opposite Party No.2.

10. Furthermore, the evidence of AWs.2 to 4 would show that the applicant had been taking treatment with these doctors for his injury. Ex.X.1 and Ex.X.2 would corroborate the evidence of AWs.2 to 4. On behalf of Opposite Party No.2, RW.1 was examined, who is Executive of Legal Claims



in their company. He stated that Ex.B.1 policy which was taken by the Opposite Party No.1 was in force at the time of accident and it is their specific case that the applicant had no driving licence. According to RW.1, the Opposite Party No.1 having knowledge that the driver had no licence allowed him to drive the vehicle. It was elicited in the cross-examination of RW.1 that he has no personal knowledge about the accident and the applicant was the driver of the offending vehicle.

11.As per the criminal case records, the applicant possessed driving licence before the accident and did not renew on the date of the accident, but renewed after the accident i.e.,on 28.11.2006. He possessed driving licence under transport till 24.04.2015. The applicant was eligible as per the driving licence to drive before the date of accident. He further stated that the applicant possessed LMV non-transport till 24.04.2015 and LMV transport till 27.11.2009 with break between renewals.



12. To support their contention, the insurance company examined RW.2, who is Junior Assistant working in R.T.A. Office, Ananthapur. Ex.B.2 is the driving licence of the applicant. It is relevant to extract the cross-examination of RW.2, which is as under:

"Elcher van comes under LMV. The applicant obtained licence from 24.05.1995 valid up to 24.04.2015 as a non-transport. He obtained licence for transport w.e.f. 22.03.1996 and valid up to 27.11.2009 the applicant is eligible to drive the Elchervan on the date of accident i.e. 20.12.2004. Hence, the applicant was not disqualified to drive the vehicles and the licence was not cancelled. If the driver is not disqualified to drive the vehicle the licence can be renewed after lapse of renewal licence. The applicant was not disqualified and hence the licence was renewed on 28.11.2006. The applicant is holding valid driving licence to drive the vehicle as he was not disqualified."

13. In the light of the above evidence of RW.2, the contention of the insurance company that the applicant had no valid driving licence falls to ground. Moreover, though the applicant made this court to re-appreciate the



evidence on record, there exists no ground to interfere with the findings of the learned Commissioner and besides there not being any substantial question of law on this point.

Assessment of Disability

14. AW.2, the doctor, who was working as Ortho Professor, Government Medical College, Ananthapur, deposed that, on 20.12.2004 he examined the applicant in Government General Hospital, Ananthapur and opined that he sustained injuries due to road accident at Garladinne, and he had fracture femur left side, fracture of both bones, right leg, fracture second and third metatarsals on the right foot etc., and he was treated by Dr. A. Jagannath, Civil Surgeon, Orthopaedic in Government General Hospital, Ananthapur till the wounds got healed. He was discharged on 21.09.2005 with the plaster of Paris at the time of discharge as the fractured bones are not united.



15. AW.3, who was Assistant Professor, Government Medical College, Ananthapur, deposed that he examined the applicant on 22.12.2005 along with other members of Medical Board and issued Medical Disability Certificate. He had mal-united segmental fracture tibia and fibula on right side, united fracture femur on left thigh bone with knee stiffness the disability assessed 30% which is permanent nature and he cannot drive the vehicle due to movements restricted at knee and right leg and he needs surgery.

16. AW.4, who working as Civil Surgeon (Ortho), Government General Hospital, Ananthapur, deposed that he examined the applicant, who sustained multiple injuries due to road accident and he was stabilized with blood transfusions. He alongwith a team of doctors have attended the applicant from 20.12.2004 to 29.01.2005 during the stay in the hospital. The learned Commissioner opined that the applicant cannot perform duty as prior to the incident as opined by the doctor, but he could obtain some sort of duty



and accordingly, he assessed the loss of earning capacity at 75% and that the physical disability was assessed at 30%.

17. In ***Chanappa Nagappa Muchalagoda v. New India Insurance Co. Limited***¹, the Hon'ble Apex Court has observed that the original claimant was a tanker driver and he met with an accident and suffered 37% of disability in his whole body and therefore, he could not perform the work of a tanker driver any longer. The learned Commissioner held that it was a disability of 50%. The High Court increased the same to 60%. The Hon'ble Apex Court after appreciating the evidence on record and the facts of the case held that it was a case of 100% personal disability of the claimant and accordingly awarded compensation.

¹ (2020) 1 SCC 796]



18. In *K. Janardhan v. United India Insurance Co. Ltd*², the Hon'ble Apex Court while dealing with a case of disability of a driver held that the loss of earning capacity in a case of the driver, who had met with an accident and lost one of his legs due to amputation, the learned Commissioner assessed the functional disability of the tanker driver as 100%, the High Court referred to Schedule-I of the Act and held that the loss of a leg on amputation resulted in only 60% loss of earning capacity. In that regard, the Hon'ble Apex Court heavily come down and set aside the judgment of the High Court and observed that since the workmen could no longer earn his living as a tanker driver due to loss of one leg, the functional disability has to be assessed as 100%.

² (2008) 8 SCC 518



19. Coming to the facts of the present case, the injured sustained multiple injuries. He had mal-united segmental fracture to Tibia and fibula on right side and united fracture femur on left thigh bone with knee stiffness. He examined the Doctor who treated him as AWs. 2,3 and 4. They in one voice stated that he cannot drive the vehicle due to movements restricted at knee and right leg and he needs further surgery. In the light of the facts and circumstances of the present case, the view taken by the learned Commissioner assessing the loss of earning capacity at 75% is on correct lines. The reason being the claimant herein is also a driver to the Elcher Van with the disability as stated by the Doctor, he cannot resume his work as a driver as prior to the accident.

20. The learned Commissioner, after coming to the conclusion about the age of the applicant, considered the



income of the applicant as per the minimum wages. Since no proof of salary was filed and as the applicant was aged about 28 years, the learned Commissioner determined the relevant factor as 209.92. The compensation calculated as per Section 4 (1)(b) of the Workmen's Compensation Act, which is equal to 60% of monthly wages multiplied by relevant factor 209.92. This Court does not find any infirmity in the impugned order besides there not being any substantial question of law on this point.

21. In *Fazlu Rahman Ansari v. National Insurance Company Ltd. &Ors.*³ the Hon'ble Supreme Court while dealing with an appeal against an order passed by Hon'ble Single Judge under Section 30 held that it is impermissible for the High Court to illegally interfered with the finding of fact arrived by the Commissioner based on recorded evidence, when the appeal was devoid of a substantial question of law.

³ 2019 13 SCC 806



22. In the factual matrix of the present case, this Court doesn't find any reason fit to interfere with the impugned order as the learned Commissioner has rightly appreciated the evidence on record, more so when no substantial question of law is shown to arise in the appeal.

23. Accordingly, the Civil Miscellaneous Appeal is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date: 15.03.2023

Note: L.R. Copy to be marked
B.O./Ksn