

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**C.M.A. No.1099 of 2008**

Between:

Shaik Khasimsa.

**.... Appellant**

**And**

1. A. Srinivasa Rao and another.

**...Respondents.**

Date of Order pronounced on : 24.02.2023

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

1. Whether Reporters of Local newspapers : Yes/No  
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy: Yes/No  
of the Judgment?

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

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# Shaik Khasimsa.

**.... Appellant**

**And**

1. A.Srinivasa Rao and another.

**....Respondents.**

! Counsel for the Petitioner : Sri B. PARAMESWARA RAO,

Counsel for the Respondents: Sri. G. SATYA PRASAD.

<Gist :

>Head Note:

? Cases referred:

- 1) (2022) SCC Online Bom 96,
- 2) (2011) SCC 343,
- 3) (2010) 9 SCC 496,
- 4) (2018) SCC Online Cal 3199,
- 5) (2022) 4 ALT 246,
- 6) (2022) Live Law (AP) 122.

**THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA****CIVIL MISCELLANEOUS APPEAL No.1099 OF 2008****JUDGMENT:**

This Civil Miscellaneous Appeal is preferred under Section 30 of Workmen's Compensation Act, 1923 (in short "The Act") against the impugned order in W.C.No.10 of 2006, dated 02.06.2007 on the file of the Assistant Commissioner of Labour-II Circle, Guntur (in short "The Commissioner").

**2.** The appellant herein is the claimant, the respondent Nos.,1 and 2 herein were being the employer and insurer (the opposite parties Nos.,1 and 2) before the Commissioner in the W.C. For the sake of convenience, the parties will be referred to as they were arrayed before the Commissioner.

**3. Case of the applicant in brief:-**

(i) The appellant approached the learned Commissioner, by filing an application under Section 22 of the Workmen's Compensation Act, 1923, seeking a compensation for the injuries sustained by him, during the course of employment.

(ii) The applicant stated that he worked as a driver to the lorry bearing No.AP-20-T-7667 owned by the Opposite Party No.1. He sustained injuries on 17.11.2005 during the course of employment. He used to get Rs.5,000/- per month. The vehicle is insured with Opposite Party No.2. As such, Opposite Party Nos.,1 and 2 are jointly and severally liable to pay compensation. At the time of accident, he was 31 years old, prays for awarding compensation of Rs.2,50,000/-.

(b) **Contention of Opposite Party No.1:-**

Opposite Party No.1 did not choose to appear before the Commissioner, as such he was set-exparte.

(c) **Version of Opposite Party No.2:-**

Opposite party No.2 filed counter seeking the applicant to prove his age, income, his relation with Opposite party No.1 as employee, injuries sustained during the course of employment and finally put the applicant in proof of his contentions in the application.

(d) **Issues, Enquiry and Finding:-**

No issues have been framed in the impugned order.

In support of the claim, applicant was examined as A.W.1. Dr.V.V.Narayan Rao who treated the applicant was examined as AW2, he opined that the percentage of the disability is 25%. Ex.A-1 to Ex.A-

10 were the documents marked. No evidence adduced on behalf of opposite parties.

The Learned Commissioner purportedly taking into "consideration" the age and minimum admissible salary and percentage of the disability awarded an amount of Rs.1,23,385/- as compensation.

#### **4. Grounds of the Appeal:-**

Being dissatisfied with quantum of compensation, the applicant approached this Court, on the grounds that, the learned Assistant Commissioner of Labour, granted only Rs.1,23,385/- against his claim of Rs.2,50,000/-. The disability of the applicant in his professional career being a driver should be considered as 100%. The loss of the earning capacity should be taken as 100% instead of 25%.

#### **5. Arguments at the Bar:-**

Learned counsel for the appellant in elaboration to what was stated in the grounds of appeal would submit that though the Doctor estimated disability @ 25% whereas the applicant being a driver suffers disability @100% and that the order impugned is bereft of any reasons.

6. *Per contra*, the counsel for the Opposite Party No.2 i.e, Insurance Company would support the order impugned stating the Learned Commissioner has rightly taken the disability as stated by the Doctor, that though the applicant claims that he used to get Rs.5,000/- p.m., nothing has been established and there are no grounds to interfere in the order impugned.

7. In the light of the rival submissions the substantial questions of law that would arise for determination in this Appeal are:-

- I. *"Whether the learned Assistant Commissioner of Labour, Guntur is correct in assessing the disability of the applicant @ 25% as stated by the Doctor instead of considering 100% in the light of his profession as driver"?*
- II. *"Whether the order impugned is sustainable under law as per the provisions of the Act"?*

**8. POINT No.1:-**

Before proceeding further, it is relevant to refer to Section 30 of the Workmen's Compensation Act, 1923, which reads as under:

***"30. Appeals.-***

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half- monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty Under Section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that **no appeal shall lie against any order unless a substantial question of law is involved in the appeal** and in the case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees

....”

Needless to say, as per the proviso to Section 30 of the Act, unless there is a substantial question of Law, the Appeal cannot be entertained. The pivotal grievance of the applicant against the impugned order is on the quantum of compensation. Though for fixing the compensation, the factual aspects of the case would prevail, the important point raised in the Appeal about considering the disability of the applicant has significance.

9. In the Memorandum of grounds of Appeal, there is a reference of several judgments but during the course of arguments nothing has been placed before this Court. A cursory look at the impugned order would show that the applicant in support of his claim examined Dr.V.V.Narayana Rao as AW.2, who deposed that the percentage of the disability of the applicant is 25%. Accordingly, the Learned Commissioner taking into consideration the age of the applicant as about 31 years in the light of the driving license, considered the minimum salary and arrived the percentage of the disability in terms of the evidence of the Doctor.

9. At this juncture, it is beneficial to refer the judgment of Hon'ble Bombay High Court in **Ashok Raybhan Kashide v. Shivaji and another**<sup>1</sup>, para Nos.,12, 13 and 14 summarize the catena of decisions with regard to functional disability to tanker drivers, as follows:-

*"12. In case of Shri Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Company Limited (supra), the Hon'ble Supreme Court has held about the direct impact on the functional disability of the appellant/original claimant. In the cited case, the appellant/original claimant was working as tanker driver. He met with an accident and*

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<sup>1</sup>2022 SCC online Bom 96



*suffered 37% disability in his whole body. He could not perform the work as a tanker driver any longer. The Commissioner held that it was a disability of 50%. The High Court increased the same to 60%. The Hon'ble Supreme Court after appreciating the evidence on record and facts of the case held that it was a case of 100 % functional disability of the appellant/original claimant and accordingly awarded the compensation.*

*13. In case of K. Janardhan v. United India Insurance Co. Ltd., (2008) 8 SCC 518, the Hon'ble Supreme Court has examined the loss of earning capacity in a case of a tanker driver who had met with an accident and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100% and awarded compensation on that basis. The High Court however, referred to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. The Hon'ble Supreme Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.*

*14. In case of Pratap Narain Singh Deo v. Shrinivas Sabatra (supra), the Hon'ble Supreme Court after appreciating the evidence on record and facts of the case held that the original*

*claimant/carpenter had lost 100% of his earning capacity due to amputation of his left arm above the elbow. He had become unfit for the work of carpenter”.*

**10.**In ***Raj Kumar v. Ajay Kumar and another***<sup>2</sup>, the Hon’ble Apex Court while enumerating the steps that are to be applied by the Tribunal in ascertainment of the effect of the permanent disability on the actual earning capacity, held in Para Nos.13,14 and 15 as follows:-

“13. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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<sup>2</sup> (2011) 1 SCC 343

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

15. It may be noted that when compensation is awarded by treating the loss of future earning

capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may”.

***(emphasis supplied)***

**11.** Coming to the facts of the present case, no such exercise has been done by the Learned Commissioner and the order impugned simply says as opined by the Doctor the disability is considered as 25%. In the light of the judgments referred to supra, the criteria to fix the compensation on the point of the disability to be assessed basing on the functional disability. The applicant being a driver if he is found to be unfit to continue his profession as a driver the loss of earning capacity shall be taken as 100%.

**12. POINT NO.2:-**

It is interesting to extract the impugned order:-

*“The Applicant was examined as AW1 through proof affidavit, who narrated what-ever stated in the application. Ex.A1 to Ex.A10 were marked. During the course of cross examination by the Counsel for O.P2 no material to oppose*

*the claim has come out. In fact there is also no evidence from O.P2's side.*

*Dr.V.V.Narayana Rao, was examined as A.W2 who opined that the percentage of disability is estimated @ 25%.*

*Under the above circumstances, for the reasons stated above the claim application is hereby allowed and the applicant is awarded with a compensation of Rs.1,23,385/- as per calculation below, taking into account the age of the applicant as 31 years as per D.L(as per Ex.A6), minimum admissible @ Salary @ Rs.3,994/- (Basic @ Rs.2,587/- + VDA @ Rs.1,407/-, Rs.3,994/-) and percentage of disability estimated @ 25% as per Doctor's opinion.*

*Calculation: Rs.3,994/- x60/100 x 205.95 x 25/100 @ Rs.1,23,385/- and therefore the O.Ps are hereby directed to pay the above compensation to the applicant within 30 days from the date of receipt of this order through a demand draft drawn in favour of Commissioner for Workmen's Compensation and Dy. Commissioner of Labour, Guntur."*

**13.** The order impugned referred supra is a cryptic order. Any order passed without reasons is not sustainable under Law. First, recording of reasons is mandated in orders as they serve multiple purposes. Primarily, a reasoned order offers clarity to the stakeholders of justice delivery system, it makes the parties aware of why a certain claim is allowed and why a certain contention is negated. Further, it creates a better opportunity for the courts sitting in appeal/revision to identify the

examination adopted in the order. The Hon'ble Apex Court in ***Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan***<sup>3</sup> summarized the law on recording of reasons observing that it is intended to serve the wider principle of justice, and it also ensures that the discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

**14.** In ***Ram Sankar Sahoo v. State of W.B.***,<sup>4</sup> the Hon'ble Calcutta High Court held that an order without reasons is no order in the eye of law. A Co-ordinate Bench of this Hon'ble Court in ***T.C.Rajaratnam (died) Vs State of Andhra Pradesh***,<sup>5</sup> reiterated the principle that reasons are heartbeat of any decision.

**15.** In ***New India Assurance Company Ltd., Vs M.Lakshmi Ramateertham and others***<sup>6</sup>, this Hon'ble Court at para Nos. 24 to 28, while emphasizing on The Workmen Compensation Rules, 1924, held thus;

*"29. In view of the statutory provisions, the Commissioner in its judgment should have framed necessary issues and concisely recorded his findings on those issues with reasons for his findings."*

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<sup>3</sup> (2010) 9 SCC 496

<sup>4</sup> 2018 SCC Online Cal 3199

<sup>5</sup> (2022) 4 ALT 246

<sup>6</sup> 2022 Live Law (AP) 122

**16.** This Court is of the view that the order impugned is not in accordance with the provisions of the Act by any measure. By bare reiteration of the evidence led before him, with no application of judicious mind, the learned Commissioner simply noted "*Under the above circumstances, for the reasons stated above*", whereas no reason is stated. The order is clearly unsustainable.

**17.** In result, in the circumstances of the case, the Civil Miscellaneous Appeal is disposed of remanding the matter back to the Commissioner for a fresh disposal of the case according to Law. In the circumstances of the case, the parties shall bear their own costs.

As a sequel, interlocutory applications pending, if any, in this Civil Miscellaneous Appeal shall stand closed.

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date: 24.02.2023

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