

(2008) 11 AP CK 0013

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 2397 of 2003

D. Peddi Raju Rao

APPELLANT

Vs

N. Yadaiah and The Oriental
Insurance Company Limited

RESPONDENT

Date of Decision: Nov. 19, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 168(1), 169
- Penal Code, 1860 (IPC) - Section 337

Citation: (2009) 2 ALD 493

Hon'ble Judges: S. Ashok Kumar, J

Bench: Single Bench

Advocate: C.S. Chakravarthy, for the Appellant; T. Ramulu, for the Respondent

Judgement

S. Ashok Kumar, J.

Aggrieved over the quantum of compensation awarded by the Commissioner for the Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II, in W.C. No. 24 of 2002 on 16-7-2002, this appeal is filed by the applicant-injured workman.

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

3. The appellant is the applicant in W.C. No. 24 of 2002. He was employed to work as a driver by the opposite Party No. I in his lorry bearing No. AP-28 T-5451. On 21.1.1996, while he was driving the lorry from Chintapally towards Hyderabad a tractor was coming in the opposite direction at Khanapur village without lights. Then, he applied sudden brakes in order to avoid hitting the opposite vehicle, as a result of which, the lorry turned turtle and in the resultant accident, the applicant sustained injuries to his right eye and right ear as the glass of the vehicle pierced into his face. He was shifted to the Government Hospital, Ibrahimpatnam and after first aid, he was advised to visit Sarojini Devi Eye Hospital where the doctors

examined him and found that his right eye was completely damaged, so that he cannot give the vehicle. In this connection, Manchal Police registered a case in Crime No. 13 of 1996 u/s 337 of IPC. The applicant was aged about 40 years at the time of the accident and was having a valid driving license. He was being paid Rs. 2,000/- per month towards salary. Hence, he filed the application for compensation of Rs. 1,00,000/- on the ground that he was permanently disabled in the said accident.

4. The 1st opposite party remained exparte. The 2nd opposite party-Insurance Company filed a counter denying all the averments made by the applicant.

5. Before the Commissioner, the applicant was examined as P.w. 1 and Exs.A.1 to A. 10 were marked. On behalf of the respondents, no oral evidence was adduced. But, Ex.R-1 was marked.

6. On a consideration of the oral and documentary evidence, the Commissioner having come to a conclusion that the age of the applicant is 45 years and assessed the disability at 45% and the loss of earning is 100%, arrived at the compensation of Rs. 1,87,672/-. However, in view of the claim of the applicant to a tune of Rs. 1,00,000/- only, the Commissioner has restricted the same to Rs. 1,00,000/- only.

7. Aggrieved over the said award, this appeal is filed by the workman-applicant.

8. The learned Counsel for the workman-applicant would contend that even though the claim was sought for an amount of rupees one lakh towards the compensation, but the amount of compensation arrived at by the Commissioner at Rs. 1,87,672/- should have been awarded. In support of his contention, he relied on a decision reported in [B. Srikantha Reddy Vs. K. Mahesh and Another](#), wherein it was held at paragraphs 19 and 20 as follows:

HOWEVER, the said amount of Rs. 2,17,633/- exceeded the maximum, claim of Rs. 2,00,000.00. It is urged for the insurance Company, that, no amount can be awarded beyond the maximum claim made in the W.C. However, the learned Counsel for the applicant vehemently urged, that, the Court has jurisdiction to award more compensation, which is found to be just, even if, it will be more than the maximum claim made in the W.C., because, of the aims and objects of the said enactment of 1923, and the same, being, a beneficial legislation.

IN this context, the learned Counsel for the appellant relied upon a decision in a [Nagappa Vs. Gurudayal Singh and Others](#), , interpreting Sections 168(1) and 169 of the Motor Vehicle Act, 1988 inter alia, postulating that, there is no restriction on the Tribunal, to award compensation, only, to the Maximum claim made in the O.P., and that, the Tribunal can awarded more compensation, then that, provided such more compensation is found by the Tribunal as Just, etc.,

EVEN though, this Ruling was delivered interpreting the said provision of different Enactment, being, the said provisions of the Motor Vehicles Act still notwithstanding,

I am of the opinion, that the legal position postulated therein, can be applied to the case, on hand, which arose out of the relevant provisions of the said enactment of 1923, which is a beneficial piece of legislation, etc.,

HENCE, the appellant -applicant will be entitled to the compensation, arrived at, in para 18 supra.

9. Per contra, the learned Counsel for the 2nd respondent-Insurance Company would submit that there is no proof for the loss of eye sight in the right eye and even if the entire right eye is presumed to be lost, as per the schedule, loss of earning would be assessed only at 40%. In the instant case, the doctor issued Ex.A.8 Disability Certificate. But, there is no proof that the workman-applicant suffered any permanent disability due to loss of sight in the right eye.

10. Learned Counsel would contend that as per the judgment of the Honourable Supreme Court reported in [Rajesh Kumar @ Raju Vs. Yudhvir Singh and Another](#), wherein it was held at paragraph 9 as follows:

The certificate in question in this case was obtained after two years. It is not known as to whether the civil surgeon of the hospital treated the appellant. On what basis, such a certificate was issued two years after the accident took place is not known. The author of the said certificate had not been examined. Unless the author of the certificate examined himself, it was not admissible in evidence. Whether the disability at 60 per cent was calculated on the basis of the provisions of Workmen's Compensation Act or otherwise is not known. It is also not known as to whether he was competent to issue such a certificate.

11. At this stage of the proceedings, both the learned Counsel have fairly conceded before this Court that the non examination of the Medical Officer who issued Ex.A8 disability certificate, has caused prejudice to the case of the parties on either side. Therefore, they seek to remit the matter back for fresh disposal after examining the Medical Officer who issued Ex.A8 for an affective adjudication of the issue involved.

12. It is also seen from the record that in the first instance, summons were issued to Dr. Govardhan Rao, Civil Surgeon of Sarojini Devi Eye Hospital for his appearance on 14.12.1998. But, he could not be examined. In the facts and circumstances of the case, I feel that the examination of the Medical officer in question, is essential for resolving the issue involved affectively.

13. In these circumstances, I feel it a fit case wherein the matter can be remanded back to the Assistant Commissioner of Labour, Hyderabad-II to deal with the issue as to the permanent disability of the applicant by examining the competent Medical Officer who issued Ex.A.8 disability certificate and dispose of the matter in accordance wits law after affording an opportunity to both the parties.

14. Accordingly, the C.M.A. is disposed of setting aside the order impugned and remitting the matter back to the Assistant Commissioner of Labour, Hyderabad-II to

deal with the issue as to the permanent disability of the applicant after examining the Competent Medical Officer who issued Ex.A.8 disability Certificate and dispose of the matter within a period of two months from the date of receipt of a copy of this Judgment, after giving an opportunity to both the parties.