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(2001) 1 ACC 232 : (2002) ACJ 595 : (2000) 5 ALT 797 : (2001) 1 LLJ 527

Andhra Pradesh High Court

Case No: A.A.O. No"s. 748 and 750 of 1993

Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Koningi Kondal and Others	RESPONDENT

Date of Decision: Aug. 2, 2000

Acts Referred:
Workmens Compensation Act, 1923 â€" Section 3, 4

Citation: (2001) 1 ACC 232 : (2002) ACJ 595 : (2000) 5 ALT 797 : (2001) 1 LLJ 527

Hon'ble Judges: Elipe Dharma Rao, J

Bench: Single Bench

Advocate: Kota Subba Rao, for the Appellant; P. Venkataswamy, for the Respondent

Final Decision: Allowed

Judgement

Elipe Dharma Rao, J.
These two Civil Miscellaneous Appeals were preferred by the Oriental Insurance Company Limited, Vijayawada,

aggrieved by the orders dated March 22, 1993 passed by the Commissioner for Workmen"s Compensation, Nalgonda, in W.C.No. 43 of 1992

filed by Koningi Kondal, Driver on the lorry bearing No. AIK 3186 belonging to the second respondent herein and W.C. No. 27 of 1992 filed by

Bajaru Govinda Rao, Cleaner on the said lorry, whereby the Commissioner for Workmen"s Compensation has awarded a sum of Rs. 98,530/-

and Rs. 70,495.75 respectively for the injuries sustained by them in a motor vehicle accident, which occurred during the course of employment

with the second respondent herein, on April 1, 1991 while the vehicle was proceeding from Kodad to Nalgonda Market with a load of paddy and

when it reached near Dandempalli Bus stage it turned turtle, as a result of which the 1st respondent in both the appeals sustained fractures and

injuries.

2. In both these appeals, the Commissioner has included batta paid to the workmen in the salary, holding that batta is also a part and parcel of the

salary and converted the percentage of disability as total disability and awarded compensation. Questioning the above two findings of the

Commissioner, the present appeals are filed.

3. The learned counsel for the appellants in both the CMAs contended that the Commissioner has converted partial disability into cent per cent

disability and determined the salary of the workman including batta paid and granted compensation. He further contended that so far as the

conversion of partial disability into 100% disability is concerned, this Court in New India Assurance Co. Ltd. Vs. Sammayya M. Shankar

(Workman) and Another, has held that only the disability certificate produced is not sufficient to compute compensation. He further contended that

the respondent-workman has to examine the doctor who issued the certificate.

4. He further relied on a decision of this Court in National Insurance Company Limited v. Mohd. Mujataba Khan and Anr. 1994-I-LLJ-259 (AP)

and contended that the Commissioner for Workmen''s Compensation has erred in including the batta in the wages of the workman for calculating

the compensation. Arguing so, he sought interference of this Court.

5. To appreciate the contentions raised by the learned Counsel for the appellant, I have gone through the facts and circumstances of the case.

6. It is evident that the doctor who issued disability certificate was not examined, therefore, I have no hesitation in holding that unless the doctor

who issued disability certificate is examined, the said document cannot be taken judicial notice. That apart, when the workman has failed to

establish that he was unable to do the work as he was doing prior to the occurrence of the accident due to the injuries sustained in the accident, the

permanent partial disability cannot be converted into cent per cent disablement and award the compensation.

7. It is also settled principle of law that batta paid to the workman cannot be included in the wages in computing the compensation, inasmuch as the

amount is paid to cover any special expenses incurred by him due to the nature of his employment. Therefore, following the above two decisions of

this Court, the orders passed by the Commissioner are liable to be set aside and are accordingly set aside.

8. In C.M.A.No. 748 of 1993 (W.C.No. 43 of 1992) the Commissioner has converted 25% disability into 100% disability and assessed the

wages of the workman at Rs. 1000/- inclusive of batta. Therefore, having regard to the decisions of this Court, I hold that the compensation has to

be re-assessed taking the wage of the workman as Rs. 800/- and disability as 25% only. It is not disputed that the workman was aged 35 years at

the time of accident. Therefore, the total compensation payable to the claimant comes to Rs. 19,900/-. Accordingly the order of the Commissioner

is modified reducing the compensation from Rs. 98,530/- to Rs. 19,900/-.

9. Coming to the C.M.A.No. 750 of 1993 (W.C.No. 27 of 1992), the Commissioner has converted 40% disability into 100% disability and

assessed the wages of the workman at Rs. 650/- inclusive of batta of Rs. 10/- per day. Therefore, having regard to the decisions of this Court, I

hold that the compensation has to be re-assessed taking the wage of the workman as Rs. 500/- and disability as 40% only. It is not disputed that

the workman was aged 25 years at the time of accident. Therefore, the total compensation payable to the claimant comes to Rs. 21,691/-.

Accordingly the order of the Commissioner is modified reducing the compensation from Rs. 98,530/- to Rs. 21,691/-.

10. In the result, both, the appeals are partly allowed reducing the compensation as indicated above. No costs.