

***THE HON'BLE SRI JUSTICE M.LAXMAN**

+ CIVIL MISCELLANEOUS APPEAL No.592 OF 2005

% 22—07—2022

The Depot Manager, APSRTC,
Karimnagar-I Depot and Another

...Appellants

vs.

\$ D.Ramulu and Another

... Respondents

!Counsel for the Appellant: Sri A.Ravi Babu, Standing Counsel

^Counsel for Respondents: Sri K.Sanga Reddy

<Gist :

>Head Note :

? Cases referred

1. 1996(3) L.L.N. 241
2. 1999(1) L.L.N. 1002

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

CIVIL MISCELLANEOUS APPEAL No.592 OF 2005

Between:

The Depot Manager, APSRTC,
Karimnagar Depot-I and Another

...Appellants

And

D.Ramulu and Another

... Respondents

JUDGMENT PRONOUNCED ON: 22.07.2022

THE HON'BLE SRI JUSTICE M.LAXMAN

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

M.LAXMAN, J

THE HON'BLE SRI JUSTICE M. LAXMAN**CIVIL MISCELLANEOUS APPEAL No.592 OF 2005****JUDGMENT:**

1. The present appeal is directed against the order dated 23.06.2003 passed in W.C.No.17 of 2001 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Karimnagar, wherein and whereby the Commissioner awarded compensation of Rs.96,161/- for the injuries sustained by the respondent No.1 herein in a motor vehicle accident that occurred on 08.12.1997 and also interest @ 9% p.a. from the date of accident till date of date of actual deposit. Aggrieved by the said order, the present appeal is at the instance of the respondents before the Assistant Commissioner of Labour.

2. The 1st respondent herein is the applicant and 2nd respondent herein is the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour.

3. The brief facts of the case are that respondent No.1/applicant was the spare driver travelling in the bus bearing No.AP-10Z-4026 from Shirdi to Hyderabad, which was a return journey. The bus was driven by one K. Chandraiah, another driver. On 08.12.1997 when the bus reached the bridge of Padgaon village near Aurangabad, Maharashtra, another bus

owned by the Maharashtra State Road Transport Corporation, which was coming from opposite direction in a rash and negligent manner, hit the bus in which respondent No.1 herein was travelling. As a result, he sustained multiple injuries. Immediately, he was shifted to nearby Hospital and subsequently, he was shifted to NIMS, Hyderabad. He suffered permanent partial disablement of 45% on account of injuries sustained by him. Basing on that, claim petition was filed before the Assistant Commissioner.

4. The appellants' case is that they did not deny the accident and the relationship between appellants and respondent No.1 as employer and employee. They also stated that on account of injury, the respondent No.1 was given alternative employment by giving pay protection. As such, he is not entitled for any compensation.

5. The Assistant Commissioner on the basis of evidence on record, found that there is 45% earning disability on account of disability sustained by the respondent No.1 herein. Accordingly, the compensation was fixed in terms of Workmen's Compensation Act and also awarded interest. Aggrieved by the same, the present appeal is filed.

6. Learned Standing Counsel for the appellants has submitted that when the pay protection was given by giving alternative employment, the

claim of the respondent No.1 for compensation under the Workmen's Compensation Act is not maintainable and this legal position was not considered by the Commissioner and the same is the substantial question of law for consideration by this Court.

7. Learned Standing Counsel for the appellants also contended that the Commissioner has not properly appreciated the injuries sustained by the respondent No.1, and the injuries are not permanent partial disability. According to him, they are not non-scheduled injuries and earning disability was not properly appreciated.

8. As seen from the evidence on record, the Commissioner has taken note of physical disability sustained by the respondent on account of injuries to left Girdle i.e. in the Hip area and the assessment of disability was done by the District Medical Board and the same was taken as loss of earning for assessment of compensation and the learned Counsel for the appellant failed to place any evidence which entitle them to reduce the earning capacity and the findings rendered by the Assistant Commissioner on this aspect does not suffer any perversity. Therefore, no substantial question of law need be framed on the said contention.

9. The only substantial question of law emerges for consideration is as follows:

“Whether the alternative employment by giving pay protection by the employer on account of injuries sustained by the workman in the course of employment, disentitles him to claim compensation under Workmen’s Compensation Act?”

10. To decide the same, it is apt to refer Section 3(5) of Workmen’s Compensation Act, which reads as follows:

“3. Employer’s liability for compensation:-

(1) to (4) xxx

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

11. A reading of the above provision makes it clear that an option is given to the workman either to choose remedy under the Workmen’s Compensation Act or common law remedy before the Civil Court. Before the Civil Court, the workman is required to prove breach of duty of the employer or his representative, which resulted the accident and he has to prove the actual damages. Whereas the remedy under the Workmen’s Compensation Act dispense with such proof. The

compensation to be awarded under the Workmen's Compensation Act is based on "No proof of negligence and no proof of actual damages."

12. Though the 1st respondent/applicant engaged counsel, there is no representation. In the circumstances, this Court appointed Sri K. Sanga Reddy, Advocate, as *amicus curiae* to assist the Court in the matter. He is before this Court and placed reliance on the decision of High Court of Orissa in **Chief Workshop Manager (P.), Carriage Repair Workshop, Bhubaneshwar Vs. Akshaya Kumar Rout**¹ wherein it was held as follows:

"7. Coming to the question of entitlement of a claimant in case there is no loss of earning and there is continuance of engagement, a reference to [Section 4\(1\)\(c\)\(ii\)](#) of the Act is necessary. The plea of employers that in case of continuance of engagement and non-reduction in earning compensation is not payable, has not found favour with the courts. As observed by the House of Lords in the case of [Ball v. William Bunt and Sons Ltd.](#) 1912 AC 496, the Act regarded a workman only as a wage-earner and was concerned not with any physical pain or suffering or disfigurement to which a workman might be subjected to by accident; but only with the loss of power to earn wages resulting from the injury. Lord Denning in *Fairloy v. John Thomson* (1973) 2 Lloyd's Sop 40, observed as follows:

It is important to realise that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of general damages. This view has also been taken by the Court of Appeal, Civil Division, England, in *Moeliker v. Key wile and Co. Ltd.* 1977 ACJ 364 (CA, England). 'Incapacity for

¹ 1996(3) L.L.N. 241

work' is not the same thing as 'incapacity to work'. It means the loss or diminution of wage-earning capacity and it includes inability to work if that be the result of the accident.

In considering loss of earning capacity in case of 'permanent partial disablement', the comparison between the wages drawn by the workman before and after the accident, from his employer at the time of the accident is not a determinative factor. If that be so, a cunning employer to tide over liability may offer a temporary employment to the claimant workman to deprive the latter his entitlements under the Act. That would be against the legislative intent.”

13. Sri K.Sanga Reddy, *amicus curiae*, also relied upon the decision of High Court of Karnataka in the case of **Executive Engineer (Electrical), Karnataka Electricity Board, Hubli Vs. Hajarat Ali Mailasab**² wherein it was held as follows:

“The plea of the appellant that in case of continuance of employment and non-reduction in earning, compensation is not payable cannot be accepted. Incapacity in work is not the same thing as incapacity to work. It means, the loss or diminution of wage earning capacity and it includes inability to work if that be the result of the accident.

Continuation of employment and non-reduction in earnings is not a ground to deny compensation to the workman who suffered permanent partial disablement.”

14. A reading of the above decisions, a similar contention, as is raised before this Court, was raised before the said Courts. By relying upon the principles laid down in English cases referred therein, a distinction has been drawn between incapacity for work and incapacity to work. It means the loss or diminution of wage earning capacity includes inability

² 1999(1)L.L.N. 1002

to work if that be the result of the accident. Apart from that, an option is given to the workmen either to elect remedy based on fault theory and proof of actual damage or no fault theory and no proof of actual damages. When a workman elects the option of no fault theory and no proof of damages, he cannot be denied such benefit on the ground that there is no actual loss which defence is available in case of common law remedy to the appellant. Such defence is impermissible before the Commissioner acting under Workmen's Compensation Act. The compensation awarded under the Workmen's Compensation is based on a structured compensation. It is not based on the actual loss of earning unlike common law liability. Therefore I do not find any merits in the contention of learned Standing Counsel representing the appellants. The efforts of Sri K.Sanga Reddy, *amicus curiae*, are appreciable.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.

M. LAXMAN, J

DATE: 22.07.2022

Note: LR Copy to be marked.

B/o. BDR