

IN THE COURT OF THE SENIOR CIVIL JUDGE
& COMMISSIONER FOR EMPLOYEES
COMPENSATION, CHALLAKERE

-: P R E S E N T :-

Sri. Devendra Pandith,

B.A., M.L.,(M.A.)

Senior Civil Judge and & Commissioner for
Employees Compensation, Challakere

Dated this the 12th day of July 2019

ECA.No.1/2018

Petitioner		V.Prakasha, s/o, Venkataswamy, 24 years, r/o, Manumaiahnahatti, Challakere taluk, Chitradurga district
		(By Sri.Ashoka.V. advocate)
		Versus
Respondents	1	Venkataswamy, s/o, Gangappa, major, owner of autorikshaw bearing Reg.no.KA- 16-B-7762, r/o, Manumaiahnahatti, Challakere taluk, Chitradurga district
	2	The Branch Manager, The Oriental Insurance co.ltd., branch office, Sri.Amareswara nilaya, Bengaluru road, Challakere town.
		Py.no.10003/31/2016/618027 valid from 25-3-2017 to 24-3-2018
		(respondent no.1 placed ex-parte, respondent 2 by Sri.B.M.Arunkumar, advocate)

:-J U D G M E N T:-

The petitioner had filed this petition U/s 22 of Workmen's compensation act, 1923, seeking for grant of admissible compensation together with 12 % p.a.for having sustained the injuries during the course of his employment as driver under 1st respondent.

2. Factual matrix of the petition as follows:-

It has been alleged by the petitioner that he being the driver of autorikshaw bearing Reg.no.KA-16-B-7762 working under respondent no.1, in discharge of his driving while he was going from Manumaiahnahatti towards Nayakanahatti, on 21-8-2017 at about 7.00.p.m. as per the instruction of his master-respondent no.1, near Canara bank, of Nayakanahatti village, the auto was met with accident, resulting which the petitioner had sustained fracture of his right radius and ulna, fracture of his right fibula condylar and other injuries. Treated as inpatient at Navodaya hospital, Davanagere from 21-8-2017 to 29-8-2017, POP was applied to his fracture, had spent Rs.50,000/-. Petitioner was of 21 year, young, energetic, employed under 1st respondent as driver to drive the auto involved in accident, now for having sustained the fracture injuries, is unable to continue his driving profession, suffering from severe pain in walking, sitting, squatting, unable to rotate his right hand had suffered permanent disability and also had lost his earning capacity. A case

been registered by Nayakanahatti police in Cr.no.193/2017, as he sustained injuries during the course of his employment under re sno.1, respondent no.1, being the owner, 2nd respondent being the insurer, are jointly and severally liable to pay the compensation and hence, prayed for grant of admissible compensation together with 12 % p.a.for having sustained the injuries during the course of his employment as driver under 1st respondent.

3. For the reason, even in spite of due service of notice, 1st respondent not appeared in the case, was then placed ex-parte.

4. In response to the notice issued, the 2nd respondent appeared through his advocate and filed objection.

5. The 2nd respondent in its objection added with the formal denial of the entire claim petition averments in regard to the age, occupation, income of the injured petitioner and the relationship of petitioner and the 1st respondent as master and servant, though admitted the issuance of policy and its coverage during the course of accident, under the head of specific defense stated that petitioner was an employer under respondent no.1, but he was a gratuitous unauthorized passenger and hence by denying its liability to indemnify the claim of petitioner prayed for dismissal of the claim petition.

6. Upon considering the material proposition of law and facts pleaded by both parties, the following issues have been framed:-

ISSUES

1. Whether the petitioner proves that he has sustained injuries while working under respondent no.1, due to the accident taken place on 21-8-2017 at about 7.00.p.m. near Canara Bank, Nayakanahatti village, Challakere taluk, when petitioner was during and in the course of his employment as driver of autorikshaw bearing Reg.no.KA-16-B-7762?
2. Whether the petitioner proves how much was the salary he had when he was working as driver in the vehicle of 1st respondent and what was his age?
3. Whether the respondent no.2 proves that the petitioner was unauthorized and gratuitous passenger, trespasser in the vehicle and he is not the employee under 1st respondent and he is not liable to pay the compensation?
4. Whether the petitioner is entitled for the compensation? If so, how much? And from whom?
5. What order or award?

7. In order to prove the above issues, Prakasha -the petitioner examined as PW.1, and examined Dr.Nagabhushana.D.M. The Orthopedic Surgeon, attached to Navodaya Hospital & Regional Trauma care centre, Davanagere examined through court commissioner as PW.2 and got marked Ex.P.1 to 11 documents.

8. Respondent's side, one Krishnamurthy, The administrative Officer of 2nd respondent company examined through court commissioner as RW.1 and has got marked the certified copy of the insurance policy under Ex.R.1.

9. Heard the arguments of learned counsel for the parties.

10. Now my answers to the above issues are as follows:-

Issue		1	Affirmatively
Issue		2	Partly affirmatively
Issue		3	Negatively
Issue		4	Partly affirmative, yes, petitioners entitle for Rs.2,62,200/- together with 9% interest p.a.from 2 nd respondent
Issue		5	As per final order for the following

∴ REASONS ∴

Issue no.1:-

11. PW.1-petitioner in his chief examination affidavit filed in lieu of examination in chief has re-iterated the entire contents of the petition, he sworn that he being the driver of autorikshaw bearing Reg.no.KA-16-B-7762 working under respondent no.1 on a monthly salary of Rs.8,000/- and daily batta of Rs.100/-, in discharge of his driving while he was going from Manumaiahnahatti towards Nayakanahatti, on 21-8-2017 at about 7.00.p.m. as per the instruction of his master-respondent no.1, near Canara bank, of Nayakanahatti village, the auto was met with accident, resulting which the petitioner had sustained fracture of his right radius and ulna, fracture of his right fibula condylar and other injuries.

12. He also lead the evidence of his treated Doctor-Nagabhushana.D.M. who examined in the case as PW.2,

through court commissioner, has spoken with regard to detail procedure of treatment and the anomalies that were found on petitioner because of injuries sustained by him in the accident, during the course of his employment under 1st respondent as a driver of autorikshaw bearing Reg.no.KA-16-B-7762.

13. In order to prove his case, petitioner has got produced the certified copy of written complaint Ex.P.1, made by Ramesha s/o, Chandranaik the other inmate of autorikshaw, to the Nayakanahatti police, narrating briefly the circumstances under which the accident was occurred for the rash and negligent driving of the autorikshaw by its driver-petitioner resulting injuries for himself and the petitioner-driver. On the basis of which Nayakanahatti police have registered a case as against the driver petitioner herein, of the autorikshaw in Cr.no.193/2017 dtd.23-8-2017 for the offence punishable U/s 279, 337 of IPC, according to Ex.P.1.

14. Under Ex.P.4, the Nayakanahatti police have conducted the spot punchanama in presence of the witnesses. After completion of due investigation, PSI of Nayakanahatti police filed the charge sheet as against the petitioner-driver of autorikshaw involved in the accident for the offence punishable U/s 279, 337 of IPC.

15. The counsel for respondent no.2, though cross examined the petitioner and the doctor who treated the petitioner, nothing found to disprove the case of petitioner.

16. By looking into oral and documentary evidence of the petitioner and respondent no.2, it is clear that the petitioner had proved the fact that he has sustained injuries while working as driver under respondent no.1, due to the accident taken place on 21-8-2017 at about 7.00.p.m. near Canara Bank, Nayakanahatti village, Challakere taluk, during and in the course of his employment as driver of autorikshaw bearing Reg.no.KA-16-B-7762. Hence, issue.no.1, answered affirmatively.

Issue.no.2.

17. The petitioner claimed that he was getting Rs.8,000/- per month as salary and daily batta of Rs.100/- from his master 1st respondent. Except bare pleadings, he has not produced any material document nor lead the evidence of his master-1st respondent. As a matter of fact, the 1st respondent in the case even in spite of service of summons upon him, for the reasons best known to him, was then placed ex-parte. As such, an adverse and a presumption can be drawn that the petitioner was working as driver under 1st respondent. As far as income of the injured is concern, in absence of production of any document, his notional income Rs.7,500/- including the daily batta is taken into consideration. Hence, without much discussion, issue.no.2 is answered partly affirmatively in the said terms.

Issue.no.3

18. The 2nd respondent by denying its liability has taken a specific plea that the petitioner was unauthorized and

gratuitous passenger, trespasser in the vehicle and he is not the employee under 1st respondent etc., To prove the said fact, the 2nd respondent except reiterating the very contention in his chief examination, not produced any document to prove the fact that petitioner was unauthorized and gratuitous passenger, trespasser in the vehicle and not the employee under 1st respondent.

19. In fact, the Ex.P.2 the written complaint/information given by one of the inmate of the offending discloses the fact that the petitioner was engaged in driving the auto, being employed under 1st respondent and the Nayakanahatti police after due investigation have filed the charge sheet Ex.P.11 as against the petitioner herein for alleged commission of offence during the course of his employment and under respondent no.1, as driver of the offending auto. Thus, it is held that 2nd respondent in the case failed to prove that the petitioner was in any way unauthorized and gratuitous passenger, or trespasser in the auto, not the employee under 1st respondent and hence, the issue answered negatively.

Issue.no.4

20. Age of the petitioner is concern, he has produced Ex.P.10 which discloses that petitioner was born on 14-8-1993, and accident in question was occurred on 21-8-2017, which does mean that the petitioner was aged 24 years as on the date of accident. No doubt can be attached to the same.

21. The assessed notional income is Rs.7,500/- as discussed while answering issue no.2, since the injured petitioner is a bachelor, 50% out of Rs.7,500/-, is deducted towards his personal income, then he is left with Rs.3,750/- per month.

22. Ex.P.4 the certified copy of wound certificate discloses that the petitioner had sustained “fracture of radius and ulna, blunt injury on his chest, fracture of his right fibula condyle and the doctor has opined the injuries are simple and grievous, the petitioner was subjected to X ray was issued with the Disability certificate by PW.2 as per Ex.P.7.

23. PW.2-Dr.Nagabhushana.D.M., who upon examination of petitioner has issued the disability certificate Ex.P.7, in his evidence also has re-appraised the said fact, and even during the course of his cross examination has withstood the veracity of his evidence in chief filed in the form of his affidavit, denied issuance of false disability certificate exaggerating the prevailing things in regard to disability to help the injured petitioner.

24. Nothing worthwhile is elicited in his cross examination thus the evidence of PW.2 is well supported by Ex.P.7 the disability certificate. PW.2 expressed that on his examination, he found the presence of deformity and tenderness, restriction of movement of right elbow flexion to an extent of 90%, knee flexion 90%, power grade 4/5, X rays discloses old united fracture of right radius and ulna and right tibia condyle and conclusively opined that the petitioner is having 40% of permanent total disability. The

signature of the doctor marked as per Ex.P.7(a). Of course, PW.2 is not a initially treated doctor, but has examined the petitioner for the purpose of assessment and issuance of disability certificate Ex.P.7, thus his evidence should be scrutinized vigilantly. The disability opined seems exorbitant in absence of production of any evaluation chart and other allied follow up documents, thus the same is restricted to 32% when compared to whole body of the petitioner.

25. Considering the assessed notional income of Rs.3,750/-per month, and the same deducted with the considered 32% of permanent disability, it further works out to Rs.1,200/- and the age of petitioner as 24, as per the Schedule-IV of The Workmen's Compensation Act, 1923, to a workmen who sustained the permanent disability at the age of 24 years, factor 218.47 is applicable one, to work out lump-sum equivalent of compensation amount for the considered disability of workmen in an accident during the course of his employment under his master comes to Rs.2,62,164/- the same is rounded off to Rs.2,62,200/- and accordingly said sum is awarded.

26. As regard to awarding the rate of interest is concern, petitioner claimed interest @ 12 % p.a. which is seems to be exorbitant one. U/s 34 of CPC, granting of 9% interest p.a. felt quite reasonable and will suffice the matter. Accordingly 9% interest p.a. is awarded from the date of petitions, till date of realization of the awarded sum.

27. In regard to liability of the respondents is concerned, Ex.R.1 the certificate of insurance produced discloses that auto involved in the accident was insured with 2nd respondent insurance company on the date of accident itself, it is held that the 2nd respondent insurance company who issued policy in favour of 1st respondent is held liable to pay compensation to the petitioner together with 9 % interest p.a. Hence, issue.no.4 answered partly affirmatively

Issue.no.5.

28. In the result, I, proceed to pass the following:

:- ORDER :-

The petition filed by the petitioner U/s 22 of Workmen's compensation Act, 1923, is allowed in part with cost.

It is ordered that the petitioner is entitled for total compensation of Rs.2,62,200/- with 9% interest p.a. from the date of petition, till date of deposit of the amount.

Respondent no. 2, is held liable to pay the compensation, accordingly, he is directed to deposit compensation within a month.

Out of said compensation awarded in favour of petitioner, 50% with interest shall be released in his favour, and remaining 50% with interest shall be deposited in his name in any nationalized Bank, for a period of 5 years

without any premature release or advance any loan.

Bank shall not cause any premature release or advance any loan without the permission of the tribunal.

Draw award accordingly.

(Dictated to the stenographer, transcribed by him, corrected, signed and then pronounced by me in the open court on this the 12th day of July 2019)

(Devendra Pandith)

Senior Civil Judge, Commissioner for
Employees Compensation,
Challakere

:- ANNEXURE :-

<u>WITNESSES EXAMINED FOR THE PETITIONER</u>		
PW.1	:	V.Prakash
PW.2	:	Dr.Nagabhushan Rao
<u>WITNESSES EXAMINED FOR RESPONDENT</u>		
RW.1	:	Krishnaumurhty
<u>DOCUMENTS GOT MARKED FOR PETITIONER</u>		
Ex.P.1	:	Certified copy of FIR
Ex.P.2	:	Certified copy of complaint
Ex.P.3	:	Spot mahazar
Ex.P.4	:	Wound certificate
Ex.P.5	:	Medical bill
Ex.P.6	:	Discharge summary
Ex.P.7	:	Disability certificate
Ex.P.8,9	:	X ray films
Ex.P.10	:	D.L.Extract
Ex.P.11	:	Certified copy of charge sheet

<u>DOCUMENTS GOT MARKED FOR RESPONDENT</u>		
Ex.R.1		Certificate of insurance

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Compensation, Challakere

Pronounced in open court.

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Senior Civil Judge, Commissioner
for Employees Compensation,
Challakere.

