

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.2828 of 2004

JUDGMENT:

This appeal is preferred against order dated 30.04.2004 in W.C.No.41 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalongda (for short, 'lower Authority'), whereunder, lower Authority granted Rs.1,87,182/- as compensation against the claim of Rs.2,50,000/-.

2. Brief facts leading to this appeal are as follows:

Claimant-1st respondent herein submitted application to the lower Authority contending that on 04.02.2000 at about midnight, while he was standing near machine in the company of 2nd respondent herein as a worker, the machine stopped working due to failure of electric power supply, but suddenly supply was restored and in that process the belt of machine hit him, as a result, 1st respondent sustained grievous injuries. He contended that he was getting Rs.3,000/- per month as wages, on account of accident he is not able to do any work and claimed compensation of Rs.2,50,000/-.

3. Appellant-Insurance Company disputed the claim of claimant and contended that claimant has to prove the wages and the disability and also relationship of employee and employer between 1st and 2nd respondents herein.

4. During enquiry, two witnesses are examined and six documents are marked on behalf of claimant and no witness is examined and one document is marked on behalf of Insurance Company. On a overall consideration of oral and documentary evidence, lower Authority fixed compensation of Rs.1,87,182/-. Aggrieved by the same, Insurance Company preferred the present appeal.

5. Heard arguments.

6. Advocate for appellant submitted that lower Authority has not properly appreciated the medical evidence and fixed loss of earning capacity at 100% though claimant possessed only two grievous injuries and one simple injury. He further submitted the evidence on record is not sufficient to show that claimant sustained 100% disability, therefore, the order of lower Authority has to be set aside. He further submitted that as per the provision of Section 4 of the Workmen Compensation Act, 1923, the finding of the lower Authority with regard to 100% loss of earning capacity is incorrect and accordingly, the compensation has to be modified.

7. On the other hand, advocate for claimant supported the order of lower Authority.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 30.04.2004 in W.C.No.41 of 2003, of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda, is legal, proper and correct?

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POINT :

9. There is no dispute with regard to injury sustained by claimant on 04.02.2000 while under employment. There is also no dispute with regard to relationship of employee and employer between respondents No.1 and 2 herein. Admittedly, the policy issued by the appellant herein is in force as on the date of incident and the claim is within the coverage of policy. Now the only dispute is with regard to the percentage of loss of earning capacity. Medical Officer is examined as AW.2, who deposed on physical examination of claimant he assessed the disability at 60% and loss of earning capacity at 100%. He specifically deposed that claimant cannot perform his work as a labour and for that reason, he assessed the loss of earning capacity at 100%. The Medical Officer was cross-

examined on behalf of Insurance Company and except putting suggestions noting could be elicited from him to discard his testimony with regard to percentage of loss of earning capacity. No witnesses are examined on behalf of Insurance Company to rebut the evidence adduced on behalf of claimant. The evidence of Medical Officer is supported and corroborated with Ex.A.4-disability certificate issued by him, who is a Orthopedic Surgeon, working in Area Hospital, Miryalguda. Claimant, who is examined as AW.1, deposed in his evidence that on account of injuries, he is unable to do labour work, which he was doing prior to incident. Therefore, the evidence of claimant is supported with evidence of Medical Officer and Ex.A.4-disability certificate, remained un-rebutted. Considering the evidence of A.Ws.1 and 2, Exs.3 and 4, lower Authority accepted the assessment with regard to loss of earning capacity and on that ground fixed the compensation.

10. In **N. Sree Ramulu @ Sree Rama Murthy v. V.Lakshmi Narayana and another**, this Court observed that percentage of disability is different from percentage of loss of earning capacity and the Court has to examine whether the injured was totally disabled from earning any kind of livelihood and whether in spite of permanent disability, he can still carry on the activities and functions which he was earlier carrying on, whether he was prevented or restricted on account of disability from his previous activities and functions for fixing loss of earning capacity.

11. When the Medical evidence clearly established that the injured cannot perform his work as labour, it would amount to complete disablement as observed in the above referred decision. Therefore, the objection of appellant's counsel with regard to percentage of loss of earning capacity cannot be sustained.

12. The next objection contended by appellant's counsel is that lower Authority took the wages at Rs.2041.55 ps. though appellant contended that the wages of claimant is only Rs.1,500/- per month. As seen from the material, claimant contended that he is getting

Rs.3,000/- per month as wages, whereas the management contended that they are paying only Rs.1,500/-. But no witness is examined on behalf of management to support the plea with regard to the wages, whereas claimant clearly deposed that he is getting Rs.3,000/- per month. Lower Authority without accepting these two versions, took the minimum wages for a helper as on the date of incident by also taking in to consideration VDA in calculating the compensation, I do not find any wrong approach by lower Authority in taking the wages for the purpose of calculating compensation. When there is no positive evidence from both sides with regard to wages of claimant, lower Authority was right in taking aid of Government Order for minimum wages in fixing wages for the category to which the claimant belong. Therefore, the objection of appellant's counsel with regard to wages is also not tenable.

13. On a scrutiny of the entire material, I am of the view that the lower Authority has not committed any error in appreciating the evidence on record or in fixing compensation and that there are no grounds to interfere with the orders of lower Authority.

14. For these reasons, appeal is dismissed. No costs.

15. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

8th April 2015.

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