

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3596 of 2004

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JUDGMENT:

This appeal is preferred against orders dated 03.06.2004 in W.C.No.19 of 2003 on the file of the Assistant Commissioner of Labour-I, Guntur, wherein, he granted Rs.1,13,061/- as against the claim of Rs.4,00,000/-.

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

Appellant was a driver employed by the first respondent herein on a lorry bearing No.AP 16U 7407 and received injuries in an accident that took place on 18.04.2002 in Assam State. Claimant submitted an application to the Commissioner of Workmen Compensation contending that he was getting Rs.3,000/- per month as wages and was aged 38 years as on the date of accident and that he is entitled for compensation of Rs.4,00,000/-. The second respondent herein who is the Insurance Company resisted the claim of the claimant on the ground that compensation claimed is excessive and claimant has to prove strictly that he is under employment of first respondent herein and he received injuries in an accident during employment. The lower Authority conducted enquiry during which claimant is examined as AW.1 and Medical Officer is examined as AW2 and 11 documents are marked on behalf of claimant. On behalf of the Insurance Company, no witness is examined and no document is marked. On a oral consideration of oral and documentary evidence, lower authority fixed loss of earning capacity of the applicant as 30%

and wages of the applicant as Rs.3,300/- including VDA and by taking the age of the injured calculated the compensation and awarded Rs.1,13,061/- including stamp duty of Rs.226/-. Aggrieved by the same, claimant preferred the present appeal contending that lower authority erred in taking loss of earning capacity only as 30% and that he is entitled for 100% of loss of earning capacity.

3. Heard arguments.

4. Advocate for appellant submitted medical officer who is examined as AW2 clearly deposed in his evidence that the applicant cannot bend his knee joint completely to sit and that there is a mal-union of femur fracture and that he cannot work as heavy vehicle driver but the lower authority basing on the permanent and partial disability assessed by the medical officer treated the same as loss of earning capacity but ignored the fact that applicant cannot do the work what he was doing prior to the accident, therefore the order of the lower authority has to be modified by treating the loss of earning capacity as 100%. On the other hand other side advocate supports the order of the lower authority.

5. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur is legal, proper and correct?

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POINT:

6. There is no dispute with regard to relationship between the appellant and the first respondent. Though in the counter Insurance Company disputed the relationship of employee and

employer, from the evidence it is clear that applicant was a driver on a lorry bearing No.AP 16U 7407 belonging to the first respondent herein and he was under employment on 18.4.2002 on which date the said lorry met with accident in Assam State. From the evidence of medical officer, AW.2, it is clear that applicant was admitted in the hospital on 21.4.2002 and his x-ray films show fracture of left femur in the lower 1/3rd i.e., supracondole region and that there was a mal-union of the fracture and because of the injury the applicant cannot bend the knee joint to sit. He also deposed that applicant cannot work as heavy vehicle driver on account of this injury.

7. As rightly pointed out by advocate for appellant, it is difficult for a driver to operate clutch and break with an injury to knee joint and when the medical officer clearly deposed that he cannot bend the knee joint completely for sitting position this injury has to be considered while fixing the loss of earning capacity. It is clear from the medical evidence of medical officer that applicant cannot drive heavy vehicles due to this injury which indicates that the applicant lost his profession which he was doing prior to the accident and thereby his earning capacity was completely lost. As rightly pointed out by advocate for appellant, in view of the nature of injuries the loss of earning capacity has to be treated as 100% but the lower authority fixed the percentage only by considering the percentage of disability. As observed by this Court in a decision reported in ***N.Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another***^[1], percentage of loss of earning capacity is different from percentage of disability.

8. Advocate for the Insurance Company opposed and contended that disability is only temporary in nature it is not

permanent and as per the evidence of medical officer, it can be rectified, therefore the contention of appellant counsel cannot be accepted. On a reading of evidence of medical officer, the submissions of insurance company cannot be accepted as the medical officer clearly stated that claimant cannot sit and cannot drive heavy vehicle on account of this injury.

9. Considering the facts of the case and the nature of injuries, and also the submissions of advocate for appellant, I am of the view that the lower authority committed error in taking the loss of earning capacity at 30% only instead of taking 100% as this is a non-scheduled injury.

10. For these reasons, the impugned order dated 03.06.2004 is liable to be modified by converting the loss of earning capacity from 30% to 100%.

11. So far as the income taken by the lower authority and the multiplier applied to the claimant, there is no dispute, therefore applying the same wages and the multiplier, compensation has to be calculated by treating the loss of earning capacity as 100%. If such calculation is made it would come to Rs.3,76,118/- (Rs.3354 x 60% = 2012.40 x 186.90 = 3,76,117.50, which is rounded to Rs.3,76,118/-).

12. Accordingly, this Civil Miscellaneous Appeal is allowed enhancing compensation amount from Rs.1,13,061/- to Rs.3,76,118/- and the second respondent shall deposit the difference amount within thirty (30) days from today. No costs.

Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 28-01-2015.
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[\[1\]](#) 2013(5) ALD 249