

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.3581 of 2004

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JUDGMENT

This appeal is preferred against order dated 14.06.2004 in W.C.No.3 of 2004 on the file of Commissioner for Women's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. The brief facts leading to this appeal are as follows;

The first respondent herein submitted an application stating that he was a workman under the employment of second respondent herein on Eicher Van bearing No.AP 15 V 6665, and on 04.12.2003 at about 2.00 AM., while he was proceeding from Amaravathi towards Karimnagar, the van met with an accident, on account of which, he sustained fracture of shaft right femur and closed fracture proximal besides other injuries and he was shifted to Vasanth Rao Naik Government Medical College and Hospital, Yavatmal and from there to NIMS Hospital, Hyderabad. He submitted that he was treated as inpatient from 06.12.2003 to 23.12.2003 and he incurred Rs.90,000/- towards medical expenses and was completely bedridden due to permanent disability and therefore, he claimed compensation of Rs.3,00,000/-.

3. Insurance company opposed the claim and denied the contentions of the claimant.

4. The lower authority conducted enquiry, during which, two witnesses were examined and 10 documents were marked on behalf of the claimant, whereas no witness was examined and one document was marked on behalf of insurance company.

5. On consideration of oral and documentary evidence, lower authority granted Rs.2,93,935/- by taking salary of the injured at Rs.2,258.50ps by applying multiplier applicable for the age group of 25 years. Now, aggrieved by the quantum, insurance company preferred the present appeal.

6. Heard arguments.

7. Advocate for the appellant submitted that though the Medical Officer assessed disability at 35%, taking disability at 100% by the lower authority is not correct and the compensation fixed by the lower authority is contrary to the evidence on record. He further submitted that Ex.A5-disability certificate and the evidence of A.W.2 would only indicate that claimant suffered partial disability, which is permanent in nature, and assessed at 35% disability, as such, the loss of earning capacity also to be taken at 35% and therefore, the compensation has to be reduced by taking the loss of earning capacity at 35%.

8. On the other hand, Advocate for claimant supported the order of the lower authority and submitted that the Medical Officer clearly deposed in his evidence that the claimant cannot sit and squat and not able to work without support and therefore, the lower authority was right in taking the loss of earning capacity at 100%.

9. Now the point that would arise for consideration is:

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

10. **POINT:**

There is no dispute with regard to relationship of employer and employee between respondents 1 and 2. There is also no dispute with regard to the accident in which the first respondent herein sustained injuries. Now, only dispute is with regard to quantum. Medical Officer, who was examined as A.W.2, deposed that on examination of the patient, he found that the patient sustained fracture of right femur and he issued disability certificate under Ex.A5. He further stated that patient cannot sit and squat and not able to walk for long distance without any support and basing on X-rays and physical examination, he assessed the disability at 35%. The lower authority took the loss of earning capacity at 100% by considering the provision under Section 4(1)(b) of Workmen's Compensation Act, 1923 (for short 'the Act'). This Court in **N. SREE RAMULU @ SREE RAMA MURTHY v. B. LAKSHMI NARAYANA** it was held that the loss of earning capacity has to be taken from the

percentage of disability and when a person became completely disabled on account of the injuries sustained in the accident, 100% disability has to be taken, even otherwise Section 4(1)(b) of the Act also contemplates 100% loss of earning capacity when the injuries made the employee totally incapacitated to do his previous work.

11. The lower authority, on physical verification of the first respondent and also considering the evidence of A.W.2, held that the first respondent is totally incapacitated to do his earlier job as cleaner and therefore, he is entitled to 100% loss of earning capacity. I do not find any wrong appreciation of evidence by the lower authority and it rightly assessed the loss of earning capacity at 100% by relying on the evidence of Medical Officer. Therefore, the contention of the learned counsel for the appellant cannot be sustained.

12. For the above reasons, I am of the view that there are no grounds to interfere with the findings of the lower authority and also the quantum fixed by the lower authority. Hence, the appeal is devoid of merit and the same is accordingly dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any pending, in this appeal, shall stand dismissed.

S. RAVI KUMAR, J

1st April, 2015

sj