

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1754 of 2004

JUDGMENT:

This appeal is preferred against orders dated 13.04.2004 in W.C.No.131 of 2003 on the file of Commissioner for Women's Compensation & Assistant Commissioner of Labour, Hyderabad.

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

First respondent herein presented application to the Commissioner for Workmen's Compensation contending that he was working as driver on a lorry belonging to second respondent herein on a monthly salary of Rs.4,000/- besides batta of Rs.100/- per day, and during course of employment, on 31.10.2003, while he was on duty, the vehicle met with an accident, as a result, he sustained grievous injuries. He contended that he is entitled for compensation of Rs.4 lakhs. This claim was resisted by the appellant herein on the ground that first respondent herein shall prove the relationship of employee and employer between himself and the second respondent herein and he should also prove that he is getting Rs.4,000/- per month as wages and contended that the claim of applicant is excessive and that the Insurance Company is not liable to pay any compensation. On these contentions, the lower authority conducted enquiry, during which, claimant is examined as AW.1 and Medical Officer is examined as AW.2 and 9 documents are marked on behalf of claimant. On behalf of the Insurance Company, no witness is examined and one (01) document is marked. On a overall consideration of oral and documentary evidence, the lower authority granted Rs.2,36,559/-

taking the wages of claimant at Rs.3,700/- per month and loss of earning capacity at 50%. Aggrieved by the compensation granted by lower authority, the Insurance Company preferred present appeal.

3. Heard arguments.

4. The main contention of advocate for appellant is that medical officer issued certificate fixing the disability at 35% but the lower authority took the loss of earning capacity at 50% without any material, therefore the order of lower authority taking the loss of earning capacity at 50% is not proper. He submitted medical officer who is examined as AW.2, specifically deposed in his evidence that physical disability of the first respondent herein is only 35%, but the same was not taken into consideration by the lower authority, on the other hand, that was enhanced to 50%, which is not legal.

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

Whether the lower authority was right in taking 50% as loss of earning capacity in fixing the compensation?

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POINT:

6. There is no dispute with regard to the accident that took place on 31.10.2003 and the injury sustained by claimant in that accident. There is also no dispute with regard to relationship of employee and employer between first and second respondents herein. The only dispute is with regard to percentage of disability and loss of earning capacity taken into account by the lower authority. Dr Subhash Rao, who treated the claimant is examined as AW.2. He deposed in his evidence that he examined first respondent herein on 04.02.2004 both clinically and radio-logically

and after verifying the medical record of the first respondent and the X-rays, he noticed mall union of fracture and moderate stiffness of right ankle joint with painful limitation. He further deposed that because of the deformity, first respondent cannot sit and squat and he cannot drive the vehicle as perfectly as he was doing prior to the accident and assessed the physical disability at 35%. In the cross examination, he deposed that physical disability percentage do not reflect in the percentage of loss of earning capacity. He deposed that he did not mention in the certificate Ex.A6 that the claimant is unfit for driving. He also deposed that driving efficiency of the applicant is reduced due to injuries. He denied the suggestion that he assessed the disability excessively. Considering this evidence, lower authority has fixed the loss of earning capacity at 50%.

This Court in ***N.SREE RAMULU @ SREE RAMA MURTHY v. V.LAKSHMI NARAYANA AND ANOTEHR***^[1] 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 performing his previous activities and functions, for fixing loss of earning capacity. In that decision, this Court has clarified that physical disability is different from loss of earning capacity and the loss of earning capacity has to be assessed on the basis of functional disability.

7. Here, from the evidence of medical officer, it is clear that the claimant cannot sit and squat and he cannot drive the vehicle

as perfectly as he was doing prior to the accident. This clearly indicates that there is substantial functional disability, particularly for a driver, this injury would effect his profession.

8. On a scrutiny of the evidence of medical officer and the injuries recorded in Ex.A6 certificate, I am of the view that the lower authority was right in fixing the loss of earning capacity at 50%, therefore the objection of the insurance company on this aspect, cannot be sustained.

9. For the above reasons, I am of the view that there is no illegality in the order of the lower authority and there are no incorrect findings, which warrant interference by this Court, therefore it is held that there are no grounds to interfere with findings of the lower authority and appeal is devoid of merits.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 24-02-2015.
gvl

[\[1\]](#) 2013(5) ALD 249