

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.3767 OF 2003

Dated 19-1-2015

Between:

Gangoni Santosh.

...Appellant.

And:

Gopi Naresh and another.

...Respondents.

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CIVIL MISCELLANEOUS APPEAL No.3767 OF 2003
JUDGMENT:

This appeal is against order dated 28-7-2003 in W.C.No.220 of 2003 of Assistant Commissioner of Labour, Nizamabad.

Appellant herein is claimant and he filed application under Section 22 of the Workmen's Compensation Act claiming compensation of Rs.4,00,000/- with interest at 24% p.a., for the injuries sustained by him during the course of employment under first respondent herein.

Brief facts leading to this appeal are as follows:

Appellant herein was working as driver under first respondent herein on a salary of Rs.6,000/-per month and on the date of accident, appellant being driver of auto bearing No. A.P.25 U 750 while proceeding from Armoor to Mamidipally lost control of the vehicle which resulted in accident and injuries to himself all over the body. As he sustained grievous injuries like fracture of left leg both bones, injuries on head, occipital region, hands, legs, back chest and neck, etc., he is entitled for compensation of

Rs.4,00,000/-.

On these allegations, Assistant Commissioner of Labour, Nizamabad conducted enquiry during which, he examined two witnesses and marked eight documents on behalf of claimant and marked one document on behalf of respondent and on an overall consideration of oral and documentary evidence, granted a compensation of Rs.1,00,762/- by taking wage of the applicant at Rs.2,000/- and loss of earning capacity at 40%. Now aggrieved by the said order, claimant preferred the present appeal.

Heard both sides.

Advocate for appellant mainly contended that lower authority erred in not taking the loss of earning capacity at 100% in view of functional disability. He further submitted that lower authority also erred in not awarding any interest and for these two reasons, award of the lower authority has to be modified.

On the other hand, learned advocate for second respondent Insurance Company supported the award of the lower authority and submitted that there are no grounds to interfere with the findings of the lower authority.

Now the point that would arise for my consideration in this revision is whether the order impugned is proper, legal and correct?

POINT:

There is no dispute with regard to relationship of employee and employer between appellant and first respondent. There is also no dispute with regard to Insurance Policy issued by the second respondent herein for the auto bearing No. A.P.25 U 750.

The main grievance of the appellant is that percentage of loss of earning capacity fixed by the lower authority is incorrect. On behalf of claimant,

Medical Officer is examined as P.W.2. He deposed that he has assessed disability at 50% permanent partial disability and loss of earning capacity at 55%. He further deposed that he has issued certificate and the same is marked as Ex.A.4. He further stated that applicant cannot do hard work on account of Disability. He was cross-examined on behalf of Insurance Company but except putting suggestions, nothing could be elicited from him to disbelieve the disability assessed by him, so also loss of earning capacity and functional disability. Lower authority, while accepting the evidence of P.W.2, unilaterally fixed the disability at 40%.

As seen from the material, there is no basis for the lower authority to arrive at 40% and it has fixed only on imagination. When the Medical Officer specifically deposed that there is functional disability of 50% and loss of earning capacity at 55% such evidence cannot be discarded without any supporting material. So, the order of the lower authority to the extent of percentage of loss of earning capacity has to be modified and the same has to be revised by taking loss of earning capacity as 55%. So far as in case of applicant is concerned, the wages fixed by the lower authority cannot be interfered because there is no material to show that applicant was drawing more than Rs.2,000/- per month as driver. So if the compensation is calculated by taking the loss of earning capacity at 55%, it comes to Rs.1,38,547-20ps which has to be rounded to Rs.1,38,547/-. ($\text{Rs.2,000/-} \times 60/100 \times 209.92 \times 55/100$). So, the difference of compensation amount comes to Rs.37,785/- and the claimant is entitled for this amount. (Rs.1,38,547/- minus (-) Rs.1,00,762/-.)

The other grievance of the applicant is that lower

authority has not granted any interest.

As seen from the order, the lower authority has not granted any interest. Honourable Supreme Court in *SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS* (^[1]) held that interest has to be granted from the date of accident till the date of deposit.

So considering the same, applicant is entitled for interest at 9% per annum from the date of accident till the date of deposit on the compensation arrived by the Assistant Commissioner of Labour.

For these reasons, the appeal is partly allowed enhancing the compensation of from Rs.1,00,762/- to Rs.1,38,547/- with interest at 9% p.a., from the date of accident, till the date of deposit. Respondent shall deposit difference amount and interest granted within 30 days from the date of receipt of copy of this judgment.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI

KUMAR

Dated 19-1-2015

Dvs

HONOURABLE SRI JUSTICE S.RAVI

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Dvs

[\[1\]](#) (2014) 2 SCC 298