

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3104 of 2004

JUDGMENT:

This appeal is preferred against orders dated 15.06.2004 in W.C.No.60 of 2003 on the file of Commissioner for Workmen's Compensation & Assistant Commissioner of Labour-I, Guntur District, whereunder, he granted Rs.66,401/- as against the claim of Rs.2,50,000/-.

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

Appellant was working as cleaner on lorry bearing No.AP 27T 1161 belonging to first respondent herein, which is insured with second respondent herein, and appellant sustained injuries during course of his employment in a accident that took place on 20.08.2002 within Juluripadu Police Station limits. According to appellant, he was 40 years old as on the date of accident and getting Rs.2,500/- per month as wages and that he is entitled for compensation of Rs.2,50,000/-.

3. Insurance Company filed counter resisting the claim of appellant. During enquiry, two witnesses are examined and 10 documents are marked on behalf of claimant, whereas, no witness is examined and no documents are marked on behalf of insurance company. On a over all consideration of oral and documentary evidence, lower authority granted Rs.66,401/- by taking loss of earning capacity at 30%. Aggrieved by the same, claimant preferred the present appeal.

5. Heard arguments.

6. The main grievance of appellant is that as per medical

evidence, claimant is unfit for the post of cleaner, but lower authority instead of taking the loss of earning capacity at 100%, only took the percentage of disability as loss of earning capacity, and the same is not correct and order of the lower authority has to be modified to that extent.

7. Advocate for appellant submitted as per Section 2(l) of Workmen's Compensation Act (for short "the Act"), the loss of earning capacity has to be taken as 100% but the lower authority failed in taking the loss of earning capacity, therefore, order of lower authority has to be modified. In support of his argument, he relied on a decision of this Court in **RAYAPATI VENKATESWAR RAO v. MANTAI SAMBASIVA RAO AND ANOTHER**^[1].

7. On the other hand, advocate for insurance company submitted that there is no medical evidence on record to show that appellant is completely disabled for doing any work. He submitted that lower authority by considering the percentage of disability and also on physical examination of applicant in open Court fixed the loss of earning capacity at 30% and that there is nothing wrong in the order to be interfered by this Court. He submitted that decision relied on by advocate for appellant has no application to the facts of this case.

7. 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?

POINT:

8. There is no dispute with regard to relationship of employee and employer between appellant and first respondent herein. There is also no dispute with regard to the accident that

took place on 20.08.2002, in which appellant herein sustained injuries during course of his employment. Appellant himself is examined as AW.1 and Medical Officer is examined as AW.2. Medical Officer deposed in his evidence that appellant was having compound fracture of both bones of left leg at lower 1/3rd and another fracture at left radius junction of the upper and middle 1/3rd. He deposed that the fracture was not united and applicant is having pain at fracture site and he is not suitable to do any hard work and he has to undergo one more operation to get the union. He deposed that he estimated the disability at 30%, which is permanent in nature.

9. Now referring to this part of evidence, advocate for appellant submitted as the medical officer has deposed that applicant is not suitable to do any hard work and that the job of cleaner involves hard work, in that way he has lost earning capacity by 100%. To support his argument, he relied on a decision of this Court cited **supra**, in which, this Court has observed that though physical disability sustained is 20 to 25%, applicant is entitled for loss of earning capacity by 100%.

10. I have perused the above referred to decision and in that case medical evidence on record is to the effect that claimant therein cannot perform his duties as cleaner and he was totally disabled, and considering the said evidence, this Court fixed the loss of earning capacity at 100%.

11. Even Section 2(l) of the Act also indicates that 'total disablement' means such disablement whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. But here, the medical officer only stated that on account of injuries, appellant cannot do any hard work and

when he stated so he was not further examined seeking any clarification as to the difference between hard work and normal work.

12. As rightly pointed out by advocate for insurance company when there is no evidence to show that claimant is disabled for doing job of cleaner, 100% loss of earning capacity cannot be taken, when the evidence on record, would only show that he is capable of doing hard work. As rightly pointed out by advocate for insurance company the evidence on record would only disclose that appellant is not suitable to do any hard work and as the medical officer has not completely ruled out as to the fitness of appellant for doing any work other than the work of cleaner, objection of appellant with regard to loss of earning capacity is not tenable.

13. As seen from the order, lower authority after physical examination of applicant in open Court and also by taking medical evidence on record, fixed the loss of earning capacity also at 30%, and I do not find any wrong in the approach of the lower authority in fixing the loss of earning capacity.

14. For these reasons, I am of the view that there are no grounds to interfere with the order of lower authority and that appeal is devoid of merits.

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

S. RAVI KUMAR, J

Date: 20-04-2015.
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