

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.3907 OF 2004

Dated 25th March, 2015

Between:

Mamillapalli Poornaiah.

...Appellant.

And:

K.Srinivasa Reddy and another.

...Respondents.

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JUDGMENT:

This appeal is preferred against orders dated 30-7-2004 in W.C.No.24 of 2003 on the file of Commissioner for Workmen's Compensation-Cum-Assistant Commissioner of Labour, Circle 1, Guntur whereunder the lower authority granted compensation of Rs.75,135/- which includes stamp duty of Rs.150/- as against claim of Rs.3,00,000/-.

Brief facts leading to this appeal are as follows:

The appellant herein submitted application to Assistant Commissioner of Labour, Circle 1, Guntur who is the Commissioner for Workmen Compensation contending that he was cleaner of lorry bearing No.AP 7T 5676 and he sustained injuries in accident that took place on 15-7-2002 while on duty and that he was getting Rs.2,000/- by way of wages at the time of accident and on account of accident, he sustained disability and that he is entitled for compensation of Rs.3,00,000/-.

Insurance Company disputed the claim of appellant and contended that he should prove that he sustained injuries during the course of employment. It is further contended that claim of the appellant is high and excessive.

On these contentions, lower authority examined two witnesses and marked six documents on behalf of claimant and examined one witness on behalf of Insurance Company. On an overall consideration of oral and documentary evidence, lower authority granted Rs.75,135/-. Not satisfied with the quantum, appellant preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that as per the evidence of Medical Officer, the appellant cannot do his earlier work but the lower authority has taken loss of earning capacity as 30% instead of taking it as 100%. He submitted that the learned Commissioner ought to have considered that the appellant has lost his job and no more fit to be a cleaner in fixing loss of earning capacity and ought to have taken loss of earning capacity at 100%. He further submitted that the lower authority has not granted any interest on the compensation amount.

On the other hand, advocate for Insurance Company submitted that lower authority rightly considered medical evidence and rightly fixed the loss of earning capacity at 30% and that there are no grounds to interfere with the order of the lower authority.

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

POINT:

There is no dispute with regard to accident and the injuries sustained by appellant in the said accident. There is also no dispute with regard to relationship of employee and employer between appellant and first respondent herein. Only grievance of the appellant is that lower authority fixed loss of earning capacity at 30% only, though the medical evidence discloses total disablement.

I have perused the material papers. As per the evidence of Medical Officer, appellant suffered dislocation of right hip and he underwent surgery on 24-7-2002. A.W.2 deposed because of the injury, sitting and squatting is difficult and in view of the dislocation and restriction of movement, he assessed the disability between 25 to 30% which is permanent and partial. He deposed that there is some difficulty for the appellant while entering and getting down from the lorry cabin. He also stated that it will be difficult for the appellant to work as cleaner due to said disability. Considering this evidence, the lower authority assessed difficulty as pointed out by the Medical Officer at 30% and took the same as percentage of loss of earning capacity. The Medical Officer nowhere stated that on account of this injury, appellant cannot work as cleaner or cannot do any work, on the other

hand, he assertively stated that it is only difficulty for the appellant to do the work of a cleaner while entering and getting down from the cabin, he may suffer some inconvenience. So, when there is no positive evidence to show that appellant is completely disabled from doing his earlier works, the contention of appellant that loss of earning capacity has to be taken as 100% cannot be accepted.

As rightly pointed out by advocate for Insurance Company, the difficulty pointed out by Medical Officer for discharging the duties of a cleaner, the lower authority assessed it at 30% and there are no grounds to interfere with the percentage assessed by the lower authority. Therefore, the objection of appellant with regard to percentage of loss of earning capacity cannot be sustained.

Now coming to the other objection with regard to interest. As seen from the order, the lower authority has not granted any interest and as per the amended Act, Hon'ble Supreme court in *SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS* 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 12% per annum from the date of accident till the date of deposit on the compensation arrived by the Assistant Commissioner of Labour.

With above modification, this Civil Miscellaneous Appeal is disposed of.

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

JUSTICE S.RAVI KUMAR

Dated 25th March, 2015.

Dvs

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