

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2068 of 2004

JUDGMENT:

This appeal is preferred against order dated 18.12.2002 in W.C No.15 of 2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Guntur, whereunder, he granted compensation of Rs.73,533/- as against the claim of Rs.3,00,000/-.

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

The appellant herein is claimant before lower Authority and he filed application contending that he worked as driver of lorry bearing No.AP 7 T 1854 belonging to 1st respondent herein insured with 2nd respondent herein and sustained injuries on 21.03.1998 during the course of his employment at Vinayaka Swamy Temple, near Devarapalle Village in West Godavari District. He contended that he was drawing Rs.2,000/- per month as salary and aged about 36 years as on the date of accident and on account of accident he is not able to do any work and entitled for compensation.

3. Insurance Company contested the case and only objection raised is that it's liability is subject to terms and conditions of the policy.

4. On these contentions and rival contentions, lower Authority examined two witnesses and marked Exs.A1 to A7 on behalf of claimant and no witness was examined and no document was marked on behalf of Insurance Company. On overall

consideration of oral and documentary evidence, lower Authority granted compensation of Rs.73,386/- by taking wages of claimant at Rs.2,000/- per month. Aggrieved by the quantum, claimant preferred present appeal.

5. Heard arguments.

6. Advocate for appellant submitted that lower Authority erred in taking 30% disability. He submitted that on account of accident appellant is not able to continue his driving profession, therefore, the lower Authority ought to have taken the loss of earning capacity at 100% and the order of lower Authority is liable to be set aside. It is further contended that lower Authority erred in fixing monthly wages at Rs.2,000/- in spite of the fact that minimum wages are Rs.2,268/-. He submitted that appellant pleaded that he was getting Rs.2,000/- as salary and Rs.100/- as batta per day and lower Authority has not accepted that version and took the minimum wages restricting it to Rs.2,000/- is not correct.

7. On the otherhand, learned standing counsel for Insurance Company submitted that lower Authority rightly calculated compensation and there is no error in the order of lower Authority. It is submitted that medical evidence discloses that disability is only 30% and when there is no evidence to show that his loss of earning capacity as 100%, lower Authority rightly fixed the loss of earning capacity at 30% and there are no grounds to interfere with such findings.

8. Now the point that would arise for my consideration:

Whether the order of the Commissioner for Workmen's Compensation an Assistant Commissioner of Labour-I, Guntur

is legal, proper and correct?

POINT:

9. There is no dispute with regard to relationship between employee and employer between appellant and 1st respondent herein. There is also no dispute that lorry bearing No.AP 7T 1854 is insured with 2nd respondent herein. It is also not in dispute that appellant received injuries in an accident that took place on 21.03.1998. Dr.K.Raja Babu, who treated appellant in Government General Hospital, Guntur is examined as AW.2. He deposed that the appellant was treated as inpatient from 21.03.1998 to 01.04.1998 and he sustained 1) fracture base of the metatarsal 5th of the right foot, 2) fracture lower fourth of right fibula, 3) fracture base of the 5th metatarsal of left foot, 4) fracture neck of the metatarsal 5th left foot and 5) chip fracture medial condyle of the left tibia. He deposed about the treatment that was given to patient and that patient was discharged on 01.04.1998 and later, he was treated as out patient. He deposed that patient was again admitted in the hospital in the year 2000 and was treated as inpatient for 40 days and that he examined the patient again on 07.11.2002. According to him, patient sustained 30% physical disability due to above injuries. He deposed due to pain and suffering, it will be difficult for him for driving the lorry and in the cross examination, he deposed that patient was not operated. He denied the suggestion that the percentage of disability was excessive.

10. So, from the evidence of medical officer, it is clear that appellant has not lost his profession completely on account of injuries but he has some difficulty to drive the vehicle and medical

officer no way stated that the appellant is not fit for driving. Therefore, the contention of appellant that he became unfit for driving and loss of earning capacity has to be taken as 100% is not at all tenable and the same is not supported by any evidence.

11. The other objection of appellant is that lower authority having taken the minimum wages for calculating the compensation has no right in restricting it to Rs.2,000/-. No doubt, the claimant pleaded that he was getting Rs.2,000/- as wages besides Rs.100/- per day as batta but this was not accepted by lower Authority and took the minimum wages but restricted those wages to Rs.2,000/-.

As rightly pointed out by advocate for appellant, no reasons are given by lower authority for restricting the minimum wages to Rs.2,000/-. The findings of the lower authority restricting the minimum wages to Rs.2,000/- cannot be sustained to that extent, the contention of the appellant has to be accepted.

12. Now compensation has to be calculated by taking the minimum wages as it is without any deduction. If a calculation is made it comes to Rs.83,219/- ($\text{Rs.2,268/-} \times 60 / 100 \times 203.85 \times 30 / 100$). Therefore, appellant is entitled to Rs.83,219/- as compensation.

13. In the result, the appeal is partly allowed by enhancing the compensation from Rs.73,533/- (Rupees Seventy three thousand five hundred thirty three only) to Rs.83,219/- (Rupees eighty three thousand two hundred nineteen only). Insurance Company shall deposit the same within 30 days from the date of receipt of copy of this order. No order as to costs. Miscellaneous petitions, if any pending, in this appeal shall stand closed.

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