

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3547 of 2004

Date:12.06.2015

Between:

Ramapurapu Yadaiah

... Appellant.

AND

B. Sailaxmi and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3547 of 2004

JUDGMENT:

This appeal is preferred against order dated 14-05-2004 in W.C.No.213/2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad.

2. Brief facts leading to this Civil Miscellaneous Appeal are as follows:-

Appellant herein submitted application under Section 22 of the Workmen's Compensation Act to the

Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad contending that he was working as a driver under first respondent herein on a monthly salary of Rs.5,000/-. On 24-04-2001, during course of his employment on lorry bearing No.AP 25 T 348, he received injuries all over his body and that he is entitled for a sum of Rs.4,00,000/- as compensation. Insurance Company opposed the claim and the Assistant Commissioner of Labour, Nizamabad conducted enquiry, during which, two witnesses are examined on behalf of claimant and seven documents are marked, whereas no witness is examined and no document is marked on behalf of insurance company. On a over all consideration of oral and documentary evidence, lower authority granted Rs.96,797/- as compensation by taking the loss of earning capacity at 40% and monthly wages of claimant at Rs.2,000/- Now aggrieved by the quantum, claimant preferred present appeal.

3. Heard both sides.

4. Advocate for appellant contended that lower authority acted contrary to law by reducing the wages of the claimant for which he is not empowered. It is further submitted that the lower authority committed error by not awarding interest from the date of accident till realisation. He further submitted that the claimant being driver, lost his profession due to the

injuries and the lower authority, instead of taking the loss of earning capacity at 100%, unilaterally fixed loss of earning capacity at 40% and for these reasons, the compensation granted by the lower authority has to be modified.

5. On the other hand, Advocate for Insurance Company supported the order of the lower authority and submitted that there are no grounds to interfere with the findings of the appellate authority, which are based on material evidence.

6. Now the point that would arise for my consideration in this miscellaneous appeal is whether order of the Court below is legal, proper and correct?

7. **Point:-** The first and foremost contention of the appellant is that the lower authority, without any power, reduced wages of the claimant and the compensation has to be granted by taking the monthly wages as pleaded and proved by the claimant. According to claimant, he was drawing monthly salary of Rs.5,000/-. For this, except relying on the self-serving testimony and salary certificate, which is marked as Ex.A5, no other evidence is produced. Lower authority, while considering the evidence of P.W.1 and salary certificate-Ex.A5, held that the salary certificate is not duly proved as the employer or the representative of the employer, who issued this Ex.A5 is not examined. I do not find any wrong in the approach of the lower authority, because P.W.1 being beneficiary and interested, his

evidence cannot be accepted in *toto* with regard to wages without any corroboration.

8. Advocate for appellant mainly focused on a decision of this Court decided in **N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another**^[1],

wherein it was held that in view of the amendment to the explanation (2) of Section 4 of the Act, the amended wages have to be taken into consideration and referring to that judgment, appellant counsel contended that as per the amended provision, wages of driver have to be taken as Rs.4,000/-, therefore, by applying that principle, compensation has to be modified. As seen from the material, the accident in this case was on 24-04-2001, whereas the amendment was with effect from 08-08-2001, therefore, that decision has no application. As rightly pointed out by Advocate for Insurance Company, the lower authority has rightly not accepted the wages as pleadd by the claimant since it is not duly proved, therefore, the first objection of the appellant cannot be sustained.

9. The next contention of the appellant is that the lower authority has taken loss of earning capacity at 40% only in stead of taking it as 100%.

10. This Court in **N. Sree Ramulu's Case (1 Supra)**, after analyzing law on the subject from the pronouncements of Supreme Court and High Court framed the following

principles to determine compensation payable under Workmen's Compensation Act. The principles culled out are as follows:-

“(a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.

(b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury;

(c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

(e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the Court where permanent partial disablement results from an injury not specified in Schedule I.

(f) The importance of medical evidence is only in case where disablement in performing duties which the workman was performing earlier cannot be decided without the aid of medical evidence. In case where it can be so decided with or without medical evidence (like amputation of limbs), medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant.

(g) Loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors taken

into account.

(h) The loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability. Equating the percentage of loss of earning capacity to the percentage of permanent disability would result in the award of either too low or too high a compensation. What requires to be assessed is the effect of permanent disability on the earning capacity of the injured. This involves ascertainment of what activities the claimant can carry on in spite of permanent disability and what he could not do as a result of the permanent disability; ascertainment of his avocation, profession and nature of work before the accident and also his age; and finding out whether he is totally disabled from earning any kind of livelihood (or) whether in spite of permanent disability, he can still effectively carry on the activities and functions, which he was earlier carrying on (or) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. In para.14 of (2011) 1SCC 343 and in para.8 of (2012) 2 SCC 267 appropriate guidance is available.

(i) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Commissioner/Court with reference to the evidence in entirety.

(j) Where a claimant is a workman who suffered injuries in an accident and his employer either provides for pension after retiring the workman on the grounds of medical invalidation or the dependants of the claimant are given appointment on compassionate grounds, he has a duty to disclose these facts and they would have a material bearing on the ascertainment of the percentage of loss of earning capacity.

(k) It is a question of fact in each case whether there is permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability.

(I) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.”

11. Since there is no positive evidence to show that the claimant is completely disable and unfit to do any work, his claim for 100% loss of earning capacity cannot be accepted. As seen from the record, lower authority, on a thorough security of the evidence and on considering the physical fitness of the claimant, fixed loss of earning capacity at 40% and I do not find any wrong in the approach of the lower authority.

12. The other contention of the appellant is that lower authority has not granted any interest. Advocate for appellant submitted that as per the decision of Supreme Court and also as per the provisions of Section 4-A of Workmen's Compensation Act, claimant is entitled for 12% interest. As per the decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS vs. NATIONAL INSURANCE COMPANY LIMITED AND**

OTHERS^[2] interest has to be granted at 12% from the date of accident till the date of deposit. So, considering the same, the claimant is entitled for interest at 12% per annum from the date of accident i.e., on 24-04-2001 till deposit and the Insurance Company shall deposit the interest part within 30 days from the date of receipt of this order.

13. For these reasons, appeal is partly allowed granting interest at 12% per annum from the date of accident i.e., from 24-04-2001.

14. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:12.06.2015

mr**b**

^[1] 2013 (5) ALD 249

^[2] (2014)2 SCC 298