

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.3687 OF 2004

Dated 25th March, 2015

Between:

Gade Sambaiah.

...Appellant.

And:

Shaik China Mabu and another.

...Respondents.

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JUDGMENT:

This appeal is against order dated 28-5-2004 in W.C.No.102 of 2002 on the file of Assistant Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Circle-I, Guntur, whereunder lower authority granted compensation of Rs.88,402/- as against the claim of Rs.2,00,000/-.

Brief facts leading to this appeal are as follows:

Appellant herein submitted an application to the Commissioner of Workmen's Compensation-cum-Assistant Commissioner of Labour, Circle-1, Guntur contending that he is employed as driver and during the course of his employment, he received injuries in the accident that took place on 6-12-2000 and that he was aged 35 years and getting Rs.3,000/- per month as wages as on the date of accident and that both the respondents herein are liable to pay compensation.

Insurance company resisted claim of appellant.

During enquiry, two witnesses are examined and seven documents are marked on behalf of claimant and no witnesses are examined and no documents are marked on behalf of Insurance Company.

On an overall consideration of oral and documentary evidence, a total sum of Rs.88,579/- which includes stamp duty of Rs.177/- is

granted as compensation by taking the loss of earning capacity as 40% and wages at Rs.2,000/- per month. Aggrieved by the same, claimant preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that minimum wages even according to the lower authority was Rs.3,070/-, as on the date of accident but only Rs.2,000/- was taken for the purpose of calculation and the same is contrary to law. He further submitted that lower authority has not granted any interest on the compensation.

He submitted that lower authority took both percentage of disability and loss of earning capacity as 40% and failed to consider that appellant sustained 100% loss of earning capacity, therefore, order of the lower authority has to be modified.

Advocate for Insurance Company supported the order of the lower authority and contended that evidence on record would only show that appellant sustained partial disability and considering the same, lower authority rightly took loss of earning capacity as 40% and there is no illegality in the order of the lower authority and that there are no grounds to interfere.

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

POINT:

There is no dispute with regard to accident that took place on 6-12-2000 in which, appellant herein sustained injuries. There is no dispute regarding relationship of employee and employer between appellant and first respondent herein. On behalf of appellant, he himself is examined as A.W.1, Medical Officer is examined as A.W.2 and cleaner of lorry is examined as A.W.3 and out of these three, evidence of Medical Officer is relevant for the purpose of determining disability and loss of earning capacity. Medical Officer deposed that the appellant is unable to walk without stick due to pain. He further deposed that there is shortening of right leg and by examining X-ray Film, he stated that the disability is about 40% which is partial and permanent. He deposed that Ex.A.3 is certificate issued by him certifying the percentage of disability. Except putting suggestions, nothing was elicited from Medical Officer to discredit the percentage assessed by him.

As seen from the evidence of doctor, the appellant can drive the vehicle but with difficulty, therefore, there is no total disablement for doing earlier work. Considering that, the lower authority fixed loss of

earning capacity as 40%. Therefore, contention of appellant that he sustained 100% loss of earning capacity cannot be accepted.

Now coming to wages, lower authority held that the minimum wage for driver was Rs.2,587/- and V.D.A. was Rs.483/- i.e., total of Rs.3,070/- but he reduced it into Rs.2,000/-

Now the objection of the appellant is that when the minimum wage is Rs.3,070/-, the lower authority ought to have taken the same amount for the purpose of calculation. As seen from the application, appellant contended that he was drawing Rs.3,000/- per month as wage at the time of accident. So, when the minimum wage was Rs.3,070/- and the appellant contended that he was drawing Rs.3,000/- per month as wage, the lower authority ought to have taken the amount pleaded by the appellant but the lower authority reduced it to Rs.2,000/- which in my view, is not correct. Therefore, considering the material on record, the amount pleaded by appellant as wage i.e., Rs.3,000/- has to be taken for the purpose of calculation of compensation and if calculation is made by taking wage of appellant at Rs.3,000/- with the same percentage of loss of earning capacity and factor applicable to age group of 40 years, it comes to Rs.1,32,602/- ($\text{Rs.3,000/-} \times 60/100 \times 184.17 \times 40/100$) and the appellant is entitled for this amount as compensation.

Next point urged on behalf of appellant is that lower authority has not granted any interest. As per the amended Act, the petitioner is entitled for interest at 12% p.a., on the compensation amount if the amount is not deposited within 30 days. As the lower authority has not granted any interest, petitioner is entitled for interest on compensation amount and the Insurance Company shall deposit difference compensation amount and interest at 12% per annum within 30 days from the date of receipt of copy of this order.

This Civil Miscellaneous Appeal is allowed accordingly.

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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