

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1422 OF 2003

Dated 13-2-2015

Between:

Jalleda Sadasivudu.

...Appellant.

And:

Dasari Sreehari and another.

...Respondents.

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CIVIL MISCELLANEOUS APPEAL No.1422 OF 2003

JUDGMENT:

This appeal is against order dated 19-2-2002 in W.C.No.14 of 2001 on the file of Assistant Commissioner of Labour, Circle-1, Guntur who is the Commissioner for Workmen Compensation.

Brief facts leading to this appeal are as follows:

Appellant herein submitted an application to the Commissioner for Workmen Compensation contending that he was working as driver on lorry bearing No.AP 27T 989 belonging to first respondent herein which is insured with second respondent herein. He also contended that while working as driver, he met with an accident during course of employment on 24-2-1999 at 10 A.M. while going from Guntur to Bihar with load of tobacco near Erravaram village of Eleswaram, East Godavari District and that due to injuries, he became physically unfit to work as lorry driver and that he is entitled for compensation of Rs.2,50,000/-.

Only Insurance Company filed counter denying

claim of the appellant. Insurance Company contended that applicant was not a driver and he is a passenger travelling in the said lorry and there is no liability for the Insurance Company. It is further contended that the claim of the appellant is high and excessive, imaginary and disproportionate.

On these contentions and rival contentions, Assistant Commissioner of Labour, Circle-I, Guntur examined two witnesses and marked seven documents 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, the Assistant Commissioner of Labour, Circle-I, Guntur granted Rs.67,251/- as compensation as against the claim of Rs.2,50,000/- and not satisfied with the said quantum, claimant preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that lower authority having held that the accident occurred during the course of employment fixed the loss of earning capacity only at 35% though the evidence on record would show that the applicant cannot drive the vehicles for a long distance. He submitted that the lower authority ought to have taken loss of earning capacity as 100% and that there is no basis for fixing 30% of loss of earning capacity and it is only on assumptions and presumptions and therefore, order of the lower authority has to be modified by taking the loss of earning capacity as 100% since the injuries sustained by claimant are not schedule injuries.

On the other hand, advocate for Insurance Company supported the order of the lower authority and submitted that compensation fixed by the lower

authority is totally reasonable. He further submitted that Assistant Commissioner of Labour, Circle-I, Guntur by taking medical evidence into consideration assessed the loss of earning capacity at 35% which is absolutely correct and that there are no grounds to interfere with the findings of the lower authority.

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

POINT:

Though Insurance Company contended in the counter that applicant is not a driver of the crime vehicle and only a passenger travelling in it, from the evidence it is clear that the appellant was working as driver on lorry bearing No.AP 27T 989 under First Respondent herein and the lorry met with an accident and the appellant received injuries in the said accident during course of employment.

On behalf of claimant, Medical Officer is examined as A.W.2 and he deposed that appellant sustained fracture of right tibia and fracture of second, third and fourth Metatarsals of right foot.

He also stated that because of injury, it is difficult for the appellant to drive the vehicle for long hours. But, in the cross-examination, he stated that appellant can attend to his normal duties and he can drive the vehicle for sometime.

As per the Medical documents, the disability was assessed at 20 to 25%.

Advocate for appellant contended that the disability is different from the loss of earning capacity and as the injuries sustained by the appellant is not a schedule injury, lower authority ought to have taken the loss of earning capacity as 100% in view of the clinching evidence of Medical Officer that appellant

cannot driver the vehicle for long hours. He further contended that the appellant being a lorry driver, he cannot drive the vehicle for long hours it has to be treated that he has lost the total earning capacity and therefore, the percentage of loss of earning capacity fixed by the lower authority is incorrect.

Learned counsel for appellant relied on a decision in *N.SREE RAMULU @ SREE RAMA MURTHY V. B.LAKSHMI NARAYANA AND ANOTHER* (^[1]) wherein this court observed that percentage of disability is different from percentage of loss of earning capacity and the court has to examine whether the injured was totally disabled from earning any kind of livelihood and whether in spite of permanent disability, he can still carry on the activities and functions which were earlier carried on whether he was prevented or restricted due to disability from his previous activities and functions for fixing loss of earning capacity.

Advocate for Insurance Company submitted that when the Medical Officer deposed that appellant can attend to his normal duties and he can drive the vehicle for some time but cannot drive it for long hours, that means, he has not completely lost his profession and this disability has not totally disabled him from earning any kind of livelihood and therefore, the contention of the appellant counsel that loss of earning capacity has to be taken as 100%, cannot be sustained.

From the evidence of Medical Officer, it is clear that the appellant has not completely lost his profession on account of the injury. From the evidence, it is clear that he was restricted due to disability, his previous work of driving the vehicle for a long time. So, as rightly pointed out by advocate for

Insurance Company, the applicant is not totally disabled from earning any kind of livelihood on account of the injuries he sustained in the accident. Only restriction is that he can drive the vehicle for some time but not for long hours. Considering this only, the lower authority fixed the loss of earning capacity at 35% though the disability assessed by the Medical Officer was from 20 to 25%.

When the injury sustained by the appellant is not a schedule injury, the lower authority has to fix the percentage considering the gravity of injury and its effect on the profession of the individual. When the appellant is not totally disabled from doing his earlier profession, the contention that 100% loss of earning capacity has to be taken is not at all correct.

At the time of arguments, advocate for appellant submitted that at least 50% loss of earning capacity may be taken because the appellant was restricted to drive the vehicle for sometime only. But to consider the submission of the learned counsel for the appellant, there is no basis and material.

On a scrutiny of the entire evidence, I have to accept the contention of the counsel for Insurance Company that the lower authority has rightly fixed the compensation by taking loss of earning capacity at 35% as there is no total disablement of earning capacity.

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

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

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

dismissed.

JUSTICE S.RAVI

KUMAR

Dated 13-2-2015.

Dvs

HONOURABLE SRI JUSTICE S.RAVI

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Dvs

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