HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1845 of 2004

JUDGMENT:

This appeal is preferred against order dated 14.05.2004 in W.C.No.108 of 2002 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Guntur, whereunder, he granted Rs.80,416/- as compensation as against the claim of Rs.3,50,000/-. Not satisfied with the quantum, claimant preferred the present appeal.

2. As per the grounds, the main grievance of claimant is that the lower Authority instead of taking loss of earning capacity at 100%, took loss of earning capacity at 20% and that the order of the lower Authority is to be set aside.

3. Heard arguments.

4. Advocate for 2nd respondent submitted that the lower Authority by considering the evidence of Medical Officer fixed the loss of earning capacity at 20% by taking into consideration of functional disability and there is nothing wrong in fixing 20% as loss of earning capacity and that there are no grounds to interfere with the findings of the lower Authority, which is based on medical evidence.

5. Now the point that would arises for my consideration in this appeal is:

Whether the order dated 14.05.2014 in W.C.No.108 of 2002, of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, is legal, proper and correct?

POINT :

6. I have perused the material. The lower Authority by considering the evidence of AWs.1 to 3, particularly, the evidence of Medical Officer-AW.3, fixed the loss of earning capacity at 20%. Though the disability recorded by the Medical Officer is 15% to 20%. The lower Authority took the functional disability as 20% and taken the same as loss of earning capacity, even the disability is in partial in nature and not permanent.

7. As per the evidence of Medical Officer though he deposed in his chief-examination that it is difficult to drive heavy vehicles due to malunion and restriction of movements, he admitted in the cross-examination, he can drive the vehicle with difficulty. So, the contention of appellant that there is 100% loss of earning capacity cannot be accepted. From the medical evidence, it is disclosed that appellant can drive the vehicle, but it may be done with difficulty. The lower Authority took the loss of earning capacity at 20%, I feel the lower Authority is right in assessing the functional disability because the Medical Officer stated that it is only difficulty and not a 100% disability restricting appellant from doing the

activities that he was carrying on prior to the accident.

8. In **N. Sree Ramulu @ Sree Rama Murthy v. V.Lakshmi Narayana and another**[1]**,** this Court observed that percentage of disabililty 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 he was earlier carrying on, whether he was prevented or restricted on account of disability from his previous activities and functions for fixing loss of earning capacity.

9. The other contention of appellant is that the lower Authority has not granted any interest on the compensation amount. I have perused the order of the lower Authority and as rightly pointed out no interest is awarded on the compensation. As per the decision of Supreme Court in **Saberabibi Yakubbhai Shaikh and others v. National Insurance Company Limited and others**[2]**,** interest has to be granted from the date of accident till the date of deposit. So, considering the same, appellant is entitled for interest from the date of accident till the date of deposit. As the interest is not granted by the lower Authority, following the judgment of Supreme Court, appellant is granted interest at 12% per annum from the date of accident till the date of deposit.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed modifying the award by granting interest at 12% per annum from the date of accident till date of deposit. The Insurance Company shall deposit the interest amount within 30 days from the date of this order. No costs.

12. Miscellaneous Petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

4th March 2015.

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[1] 2013(5) ALD 249

[2] (2014)2 SCC 298