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PÊqu"#06#y,V'fV'¥V'Ä'üöôPööööü"U"ε'oööô#ööööøOöOöOöOöOöAAÄÄÄÄÄýýýTHE HON'BLE SRI JUSTICE S. RAVI KUMAR C.M.A No.2887 of 2004 Date:05.06.2015 Between: P. Thoudu Appellant. AND P. Rambabu and another. Respondents. The Court made the following : THE HON'BLE SRI JUSTICE S. RAVI KUMAR C.M.A No.2887 of 2004 JUDGMENT: This appeal is preferred against order dated 28-02-2002 in W.C.No.18/2001 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam. 2. Brief facts leading to this Civil Miscellaneous appeal are as follows:- Appellant herein presented application to the Assistant Commissioner of Labour, Circle-I, Visakhapatnam contending that he was working as labourer under first respondent herein; on 20-01-2001, he sustained injuries due to the accident that took place at Seethampeta on N.H-5 road and he was drawing a sum of Rs.1,800/- per month and that he was entitled for compensation of Rs.1,95,219/-. Assistant Commissioner of Labour, Circle-I conducted enquiry during which, two witnesses are examined and five documents are marked on behalf of claimant and no witness is examined and no document is marked on behalf of contesting respondent. On a over all consideration of oral and documentary evidence, lower authority fixed compensation at Rs.92,768/- by taking the wages of the injured at Rs.1,782/- as per the minimum wages applicable in the State and aggrieved by the quantum, present appeal is preferred. 3. Heard both sides. 4. Advocate for appellant submitted that lower authority failed to consider that appellant is totally disable and not fit for doing any work. He submitted that lower authority ought to have taken loss of earning capacity as 100%. He further submitted that the lower authority has not granted any interest and for these reasons, the order of the lower authority has to be modified. 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 lower authority. 5. Now the point that would arise for my consideration in this miscellaneous appeal is whether the order of the Courts below are legal, proper and correct? 6. Point:- There is no dispute with regard to accident and the relationship of employee and employer between appellant and first respondent herein. The only dispute is with regard to quantum. First contention of the appellant is that he is completely disabled and cannot do any work, therefore, the loss of earning capacity has to be taken as 100%, but as seen from the evidence, the Doctor, who is examined as A.W.2, has nowhere stated that the appellant is unfit for doing any work. On the other hand, his evidence would show that the disability is only partial disability and considering the evidence of Medical Officer, lower authority fixed the loss of earning capacity at 40%. I do not find any wrong in the approach of the lower authority, because there is no evidence to show that the appellant herein is completely disabled. 7. This Court in N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another, 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 total 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. (l) 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.” 8. As there is no evidence attracting the circumstances pointed out in the above referred decision, the claim of the appellant for 100% loss of earning capacity cannot be accepted. 9. The other objection of the appellant is that lower authority has not granted any interest. Advocate for appellant contended that as per the decision of Supreme Court, petitioner is entitled for interest from 30 days after the date of the accident. As per the decision of Hon’ble Supreme Court in SABERABIBI YAKUBBHAI SHAIKH AND OTHERS vs. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS interest has to be granted from the date of accident till the date of deposit. So, considering the same, claimant is entitled for interest at 12% per annum from the date of accident till the date of deposit of the compensation arrived by the Assistant Commissioner of Labour. As per the Act, opposite party has 30 days time to pay the compensation. 10. As rightly pointed out by Advocate for appellant, the lower authority erred in not granting any interest. Considering the request of the Advocate for appellant and following the above referred Supreme Court decision, claimant is entitled 12% interest. Admittedly accident was 20-01-2001. According to advocate for appellant injured is entitled for interest from 30 days after the accident. Considering the same, it is held that appellant is entitled for interest from 20-02-2001 on the compensation determined by lower authority and the Insurance Company shall pay the interest amount within 30 days from the date of receipt of this order. 11. Accordingly, appeal is partly allowed. No costs. 12. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR Date:05.06.2015 mrb 2013 (5) ALD 249 (2014)2 SCC 298 PAGE PAGE

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