

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1967 OF 2003

Dated 9-2-2015

Between:

Mallavarapu Malleswara Rao.

...Appellant.

And:

Gayatri Projects Limited, Chinakakani,

Mangalagiri Mandal, Guntur District and another.

...Respondents.

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CIVIL MISCELLANEOUS APPEAL No.1967 OF 2003
JUDGMENT:

This appeal is against order dated 10-6-2002 in W.C.No.74 of 2001 on the file of Assistant Commissioner of Labour Circle-I, Guntur whereunder he granted Rs.1,54,844/- as against claim of Rs.3,00,000/-.

Brief facts leading to this appeal are as follows:

Appellant herein filed application before Commissioner for Workmen's Compensation i.e. Assistant Labour Commissioner, Guntur contending that he was employed as Mason by first respondent herein and during course of his employment, he sustained injuries and he lost the left thumb, left index finger and left middle finger due to bomb blast and for that he claimed compensation of Rs.3,00,000/- and that the Assistant Commissioner of Labour Circle-I, Guntur, by assessing the loss of earning capacity at 57%, fixed the compensation and not satisfied with the same, claimant preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that lower authority failed to notice that the functional disability has incapacitated the appellant to do the work, that he was doing earlier and therefore, the loss of earning capacity ought to have been taken as 100% and submitted that the lower authority fixed compensation only on presumptions and surmises and not based on any rational principles laid down by this Court. He further submitted that appellant is entitled for 100% loss of earning capacity and compensation granted is too meager.

No arguments are advanced on behalf of Insurance Company.

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

POINT:

According to appellant, he was an employee of Gayatri Products Limited and during course of his employment, while he was on duty near Nagarjuna University, Managalagiri, he lost his left thumb, index finger and middle finger and tip of right middle finger due to bomb blast. According to him, he was 18 years as on the date of accident and he was getting Rs.3,000/- per month as wages.

On behalf of appellant, two witnesses are examined. First witness is the claimant himself and second witness is the Medical Officer. There is absolutely no dispute with regard to injuries sustained by appellant and also with regard to relationship of employee and employer between appellant and first respondent herein. The main objection of appellant is that loss of earning capacity fixed by lower authority at 57% is incorrect and it should have been 100%.

Advocate for appellant contended that since

appellant is mason by profession, due to loss of thumb, index finger and middle finger, he cannot perform the work that he was doing prior to the accident and therefore, he is totally disabled to continue his masonry profession.

Admittedly, these injuries are schedule injuries and for schedule injuries, percentage of loss of earning capacity, as indicated in the schedule for the respective injuries, has to be taken.

As seen from the record, Assistant Commissioner of Labour, Circle-1, on a consideration of evidence of Medical Officer and also the percentage of loss of earning capacity given in the schedule, fixed the loss of earning capacity at 57%. For loss of left thumb, 30% is the loss of earning capacity, for loss of two fingers, 20% is the loss of earning capacity and for loss of tip of right hand and middle finger, loss of earning capacity is 7% and the total loss of earning capacity is 57% which was taken by the lower authority.

I do not find any wrong calculation of loss of earning capacity nor any incorrect findings in the order of the lower authority. When the schedule indicates the loss of earning capacity for the injuries sustained by the appellant, contention that 100% loss of earning capacity is to be taken cannot be accepted, particularly, when there is no material to show that the appellant was totally disabled from eking out his livelihood on account of these injuries.

For these reasons, I am of the view that lower authority has rightly fixed the compensation by taking the loss of earning capacity at 57% and that there are absolutely no grounds to interfere with the order of the lower authority.

For these reasons, 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 9-2-2015.

Dvs

HONOURABLE SRI JUSTICE S.RAVI

KUMAR

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