

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1494 OF 2003

Dated 12-2-2015

Between:

_____ Pallepogu Babu.

_____...Appellant.

And:

_____ S.S.K.Tulasinarayana and another.

_____...Respondents.

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CIVIL MISCELLANEOUS APPEAL No.1494 OF 2003
JUDGMENT:

This appeal is against order dated 24-11-1999 in W.C.No.283 of 1996 on the file of Assistant Commissioner of Labour Circle-I, Guntur whereunder the Assistant Commissioner granted Rs.64,138/- as against claim of Rs.2,50,000/-.

Brief facts leading to this appeal are as follows:

Appellant herein filed application before Commissioner of Labour, Circle-I, Guntur, claiming compensation of Rs.2,50,000/- contending that he was working as cleaner on lorry bearing No.APH 1762 belonging to first respondent herein which is insured with second respondent. He contended that he received injuries during course of employment on 4-5-1996 at about 10-30 P.M., while working as cleaner near Ramachandra Rice Mill, By Pass Road, Mangalagiri, Guntur District. He further contended that on account of injuries, he became unfit to work as a cleaner and he got 100% disability and entitled for compensation of Rs.2,50,000/-.

Insurance company disputed the claim of the

appellant and contended that there is no privity of contract between appellant and the Insurance Company. It is further contended that appellant is put to strict proof of his employment, age, wages and disability. It is further contended that the amount of compensation claimed by appellant is high and excessive and speculative.

On these allegations, Assistant Commissioner of Labour, Circle-I, Guntur examined two witnesses and marked three documents on behalf of claimant and no witness is examined and no document is marked on behalf of Insurance Company.

On an overall consideration of oral and documentary evidence, the Assistant Commissioner of Labour granted Rs.64,138/- as compensation taking the loss of earning capacity of the applicant at 40%. Not satisfied with the compensation awarded, claimant preferred the present appeal.

Advocate for appellant submitted that the court below ought to have seen that the percentage of disability as assessed by Medical Officer is different from percentage of loss of earning capacity and the lower authority ought to have taken loss of earning capacity at 100% in view of the clinching evidence that appellant was unfit to work as cleaner on account of the injuries. He further submitted that the order of the lower authority has to be set aside and the percentage of loss of earning capacity has to be taken as 100%.

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 of lower authority is proper, legal and correct?

POINT:

According to appellant, he was working as

cleaner on lorry bearing No.APH 1762 belonging to first respondent herein. To prove that he is under employment of first respondent herein, the claimant-appellant himself is examined as A.W.1 and he deposed about his employment and also about receiving injuries during the course of employment. Though he was cross-examined on behalf of Insurance Company, except putting suggestions, nothing could be elicited from him to discredit his testimony.

Medical Officer is examined as A.W.2 and he deposed that the appellant sustained fracture on right cuboid bone of right foot. He further deposed that appellant received crush injury on right foot which resulted in above referred fracture. He deposed that there is deformity of right foot and shortening of great toe and restriction of range of movements of right foot. He deposed that fracture united with deformity and that deformity cannot be rectified. He further deposed that appellant can do other jobs other than work of a cleaner and he assessed the disability at 40%.

Considering the evidence of Medical Officer, which is supported with the Wound Certificate and Case Sheet, lower authority fixed the loss of earning capacity also at 40%.

Now the contention of the appellant is that the loss of earning capacity has to be taken as 100% since Medical Officer deposed that the appellant cannot work as a cleaner.

In N.SREE RAMULU @ SREE RAMA MURTHY
v. B. LAKSHMI NARAYANA AND

ANOTHER (^[1]) this court observed while assessing loss of earning capacity, court has to see whether disability made the injured totally disabled from earning any kind of livelihood and whether injured can carry on

some other activity for earning other than the work he was doing prior to the accident.

To fix the loss of earning capacity at 100%, there must be evidence to show that the injured was totally disabled from earning any kind of livelihood but from the evidence of Medical Officer, it is clear that the injured can do other work.

Here, as seen from the evidence, it is clear that injuries are only shortening of great toe. Now it has to be seen, for discharging the duties of a cleaner, whether the shortening of great toe would obstruct. When the Medical Officer clearly stated that appellant can do other jobs other than the cleaner post which means that he is not totally disabled from eking out his livelihood. Question of 100% loss of earning capacity would arise only when the injured is totally disabled from eking out any livelihood on account of the injury. But when the applicant can do other jobs, disability is only partial, for which, the lower authority fixed the percentage at 40%.

As seen from the material, the lower authority on physical examination of the applicant observed that the loss of earning capacity can be only 40%.

I do not find any wrong appreciation of evidence with reference to facts of the case by the lower authority. The disability was assessed on the basis of restriction of range of movements of right foot and shortening of great toe. The lower authority has meticulously examined each and every aspect in arriving the loss of earning capacity at 40%. I do not find any incorrect findings in the order of the lower authority and the Assistant Commissioner of Labour, Circle-1, has rightly appreciated the evidence on record and come to right conclusion. I do not find any ground to interfere with the findings which are based

on material.

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

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 12-2-2015.

Dvs

HONOURABLE SRI JUSTICE S.RAVI

KUMAR

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Dvs

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