

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1307 of 2004

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JUDGMENT:

This appeal is preferred against orders dated 21.01.2004 in W.C.No.24 of 2000 on the file of the Commissioner for Women's Compensation & Assistant Commissioner of Labour, Nalgonda.

2. Appellant herein is the claimant, who submitted application before the Commissioner for Workmen's Compensation i.e., Assistant Commissioner of Labour, Nalgonda claiming a sum of Rs.2,00,000/- for the injuries sustained by him in a accident that took place on 23.10.1999 during course of his employment under 1st respondent herein. The lower authority on consideration of evidence of applicant and the medical officer, besides documents Exs.A1 to A8, granted Rs.58,347.23ps. as compensation as against the claim of Rs.2,00,000/-.

3. Heard arguments.

4. It is the contention of appellant that the lower authority took only 30% as loss of earning capacity though the medical officer certified that the disability is to the extent of 45%. The other objection of the appellant is that lower authority having taken minimum wages into consideration, reduced the wages by taking only 60% of the wages while calculating compensation as done in a case of death. The third objection of appellant is that the lower authority has not granted any interest on the compensation and on these three grounds the appellant sought for modification of the award passed by the lower authority.

5. Other side supported the order of the lower authority and contended that there are no grounds to interfere with the compensation fixed by the Assistant Commissioner of Labour, Nalgonda.

6. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nalgonda is legal, proper and correct?

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POINT:

7. There is no dispute with regard to relationship of employee and employer between the appellant and the first respondent herein. According to claimant, on 23.10.1999 the driver of vehicle bearing No.APH-3510 could not negotiate a sharp curve, as a result, the vehicle went off the road and in the process, claimant who was cleaner of said vehicle sustained both grievous and simple injuries. According to appellant, he was shifted to Kamala Nehru Hospital, Hill Colony, and there he was treated as inpatient and he suffered 45% disability because of the accident. The appellant is examined as AW.1 and through him, certified copy of F.I.R, wound certificate, certified copy of charge sheet, attested copy of insurance policy, disability certificate issued by the medical officer, out patient card along with scan report and treatment card of Osmania Government Hospital and the medical record of NIMS are marked as Exs.A1 to A8 respectively. Claimant also examined Medical Officer as AW.2, who deposed that he treated appellant, and according to his observation, the disability sustained by appellant is 45%.

8. As seen from the material, lower authority took minimum wages applicable as per G.O.Ms.No.71 dated 16.04.1991 and fixed

the wages of appellant at Rs.1473.75ps per month. Admittedly the applicant was cleaner of the vehicle and as the driver failed to negotiate a sharp curve, the accident occurred.

9. As seen from the order of the lower authority, out of the monthly wages of Rs.1473.75 ps., only 60% was taken for the purpose of calculating the compensation. Now the grievance of the appellant is that the entire Rs.1473.75 ps has to be taken because this is not a case of death to deduct anything towards personal expenses of the deceased and that the lower authority committed error in not taking the entire monthly wages as fixed under the Minimum Wages Act. I do find some force in the submission of learned counsel for appellant because the lower authority without giving any reasons deducted 40% of wages while calculating the compensation. So to that extent, order of the lower authority has to be corrected.

10. The other objection of the appellant is that only 30% is taken as loss of earning capacity though the medical evidence discloses that the disability sustained by appellant is 45%. Admittedly, the injuries sustained by appellant are non-schedule injuries and in case of non-schedule injuries, the percentage has to be fixed as per the medical evidence.

11. As seen from the record, the medical officer is examined as AW.2 and he issued Ex.A5 disability certificate, which discloses the percentage of disability as 45%. No doubt percentage of disability is different from percentage of loss of earning capacity, but while assessing the loss of earning capacity, the disability has to be considered.

12. Here, the appellant was a cleaner prior to the accident

and the injury sustained by him is fracture of right hip. According to medical evidence, there is a restricted movement of right hip, and on account of it, the applicant cannot have free movement and the disability is assessed at 45%.

Learned counsel for appellant relied on a decision in **N.SREE RAMULU @ SREE RAMA MURTHY v. V.LAKSHMI NARAYANA AND ANOTEHR**^[1] where 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 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.

13. As rightly pointed out by advocate for appellant lower authority ought to have taken the percentage of disability as assessed by the medical officer as percentage of loss of earning capacity because of the restricted movement. Therefore, the order of the lower authority to that extent has to be modified.

14. The other objection is that the lower authority has not granted any interest on the compensation. Hon'ble Supreme court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS**^[2] held that interest has to be granted from the date of accident till the date of deposit. So, considering the same, applicant is entitled for interest at 9% per annum from the date of accident till the date of deposit on the compensation arrived by the Assistant Commissioner of Labour.

15. In view of the above findings, order of lower authority is to be modified. Now if calculation is made by taking the wages at Rs.1473.75ps and loss of earning capacity at 45% it would come to Rs.1,45,868/-($1473.75 \times 219.95 \times 45\% = 1,45,868.09$, which is rounded to Rs.1,45,868/-), and claimant is entitled for the same.

16. Accordingly, this Civil Miscellaneous Appeal is allowed enhancing compensation amount from Rs.58,347.23ps to Rs.1,45,868/- and appellant is entitled for interest on this amount at the rate of 9% p.a. from the date of accident till the date of deposit. No costs.

Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 19-02-2015.
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[\[1\]](#) 2013(5) ALD 249

[\[2\]](#) (2014)2 SCC 298