

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.Nos.2486 and 3191 of 2004

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COMMON JUDGMENT:

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These two appeals arise out of order dated 31.01.2004 in W.C.No.33 of 2002 on the file of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour Circle-II, Guntur.

Brief facts leading to these appeals are as follows:

Adapa Venkata Narasaiah is appellant in CMA No.2486 of 2004 submitted application to Assistant Commissioner of Labour Circle-II, Guntur claiming a sum of Rs.4,00,000/- as compensation contending that he was working as driver under first respondent and on 05.11.2011 when he was on duty proceeding to Mumbai from Khammam he suffered a snake bite at Sholapur when the vehicle was stopped for filling petrol at a petrol bunk and that he was treated at N.M.Wadia Charitable hospital as inpatient for 11 days and also at the hospital of Dr.Anil Kumar at Guntur and Nagarjuna hospital, Vijayawada and that he is entitled for compensation of Rs.4,00,000/-.

Insurance company resisted the claim disputing the incident of snake bite. Lower authority conducted enquiry and examined four witnesses and marked ten documents on behalf of the claimants and no witness is examined and no document is marked on behalf of the insurance company. On a over all consideration of oral and documentary evidence, lower Authority granted Rs.1,24,843/- as compensation and a sum of Rs.250/- as stamp duty totaling Rs.1,25,093/- with interest at 8% from the date of accident till the date of realization. Not satisfied with the quantum, claimant preferred CMA No.2486 of 2004 and aggrieved by the order of compensation, insurance company preferred CMA No.3191 of 2004.

Heard both sides.

Advocate for claimant submitted that as per the evidence of medical Officers the claimant cannot do his earlier work of driving and became totally disabled. But the lower authority only fixed the loss of earning capacity at 40% instead of 100%. He further submitted that the claimant has become unfit for driving. Therefore, the compensation as claimed is just and reasonable but the lower authority granted only Rs.1,24,843/- and the same has to be modified.

On the other hand, advocate for insurance company submitted that the claimant has not produced any medical evidence for his treatment at Sholapur hospital and thereby has not proved the incident of snake bite. He further submitted that even according to the evidence of medical Officer the claimant is suffering with respiratory paralysis and the documents produced before the Court pertain to ailment of respiratory paralysis, the lower authority committed error in accepting that record for granting compensation, therefore, the order of the lower authority has to be set aside.

Now the point that would arise for my consideration is:

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

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POINT:

It is the specific case of claimant that he is employed as driver on lorry bearing No.AP-37T-3354 and the said lorry is stopped at Sholapur for filling petrol and that he went for passing urine, at that time, he suffered with a snake bite on his left ankle and immediately he was admitted in N.M.Wadia Charitable hospital, Sholapur, where he was treated as inpatient for 11 days. To prove the same, he deposed in his evidence that while going from Khammam to Mumbai with load of rice, this incident happened near Petrol Bunk at Sholapur. He has not examined any Medical Officer from N.M.Wadia Charitable Hospital and not produced the medical records regarding the said hospital. With regard to his

evidence after discharge from N.M.Wadia Charitable hospital he took treatment in the Nursing Home of Dr.Anil Kumar and also in Nagarjuna hospital and to prove the same he examined A.W.3 and A.W.4. According to the evidence of AW.3 the claimant was admitted in his hospital on 21.12.2001 and two operations were conducted on him and he was discharged on 29.01.2002 and the case sheet is marked as Ex.A.7. He also deposed that patient was shifted to Madras. AW.4 deposed that the claimant was admitted in his hospital on 25.03.2002 as inpatient and he deposed that as per the record of N.M.Wadia Hospital, the claimant suffered snake bite and he was treated in the said hospital. Both of them assessed the physical disability at 20 to 25% and loss of earning capacity at 40%. AW.4 clearly stated that due to the injuries the claimant couldn't drive the vehicle continuously. But, both the doctors have not stated that the claimant is unfit for driving. Basing on this, the lower authority accepted the loss of earning capacity as spoken by AW.4 and calculated the compensation. I do not find any wrong appreciation of evidence by lower Authority with reference to facts so also the percentage of loss of earning capacity. Therefore, the contention of the advocate for claimant with regard to 100% loss of earning capacity cannot be sustained.

With regard to objection of insurance company that the claimant has failed to show that he sustained snake bite during the course of employment also cannot be accepted in view of the evidence of AW.1 which remained unrebutted and corroborated by AW.4 to some extent. For these reasons, I am of the view that there are no merits in both the appeals and the lower authority has rightly granted compensation of Rs.1,24,843/- and that both the appeals are liable to be dismissed.

Accordingly, both the appeals are dismissed. No costs.

Miscellaneous petitions, if any pending, in this appeal, shall stand closed.

JUSTICE S.RAVI KUMAR

Dt.1st April, 2015

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