

*HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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CIVIL MISCELLANEOUS APPEAL Nos.235, 250 and 251 of
2005

Date : 27-02-2015

CIVIL MISCELLANEOUS APPEAL No.235 of 2005

The United India Insurance Company
Limited, repled by its Divisional Manager,
Divisional Office-I, Secunderabad.

..... Appellant

Vs.

\$ S.K.Razak and another.

.....Respondents

<GIST:

>HEAD NOTE:

! Counsel for the appellant: Sri Naresh Byrapaneni

^ Counsel for Respondent No.1: Sri S.Sudarshan Reddy

CASES REFERRED:

1. (2011) 1 SCC (Civ) 164

2. 2006(4) ALD 398
3. (2007) 2 SCC 349
4. 2007(4) ALT 607 (DB)

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL MISCELLANEOUS APPEAL Nos.235, 250 and 251 of
2005

Date: 27.02.2015

CIVIL MISCELLANEOUS APPEAL No.235 of 2005

Between:

The United India Insurance Company
Limited, repled by its Divisional Manager,
Divisional Office-I, Secunderabad.

..... Appellant

And:

S.K.Razak and another.

..... Respondents

Counsel for the appellant: Sri Naresh Byrapaneni

Counsel for Respondent No.1: Sri S.Sudarshan Reddy

CIVIL MISCELLANEOUS APPEAL No.250 of 2005

Between:

The United India Insurance Company
Limited, repled by its Divisional Manager,
Kothagudem, Khammam.

..... Appellant

And:

Karam Bhadraiah and another.

.....Respondents

Counsel for the appellant: Sri Naresh Byrapaneni

Counsel for Respondent No.1: ---

AND

CIVIL MISCELLANEOUS APPEAL No.251 of 2005

Between:

The New India Assurance Company
Limited, repled by its Divisional Manager,
Ranigunj, Secunderabad.

..... Appellant

And:

P.Jaipal Reddy and another.

.....Respondents

Counsel for the appellant: Sri Naresh Byrapaneni

Counsel for Respondent No.1: Sri Chandra Sekhar Reddy Gopi
Reddy

The Court made the following:

COMMON JUDGMENT:

Though the parties are unconnected with each other in these appeals, as a common issue, which is of vital importance has arisen in these appeals, they are heard and being disposed of together.

Civil Miscellaneous Appeal No.235 of 2005 arises out of award, dated 17.01.2005 in W.C.Case No.24 of 2004 on the file of learned Commissioner for Workmen's Compensation and

Assistant Commissioner of Labour-I, Hyderabad. This appeal is filed by the United India Insurance Company Limited, represented by its Divisional Manager, Divisional Office-I, Secunderabad feeling aggrieved by the above-mentioned award, whereunder the Commissioner has awarded a sum of Rs.3,98,042/- towards compensation in favour of respondent No.1, who was a driver of a lorry, for having suffered certain injuries.

Civil Miscellaneous Appeal No.250 of 2005 is filed by the same company i.e., United India Insurance Company Limited, represented by its Divisional Manager, Kothagudem, Khammam, against award, dated 07.04.2004 in W.C.Case No.35 of 2002 on the file of learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Khammam, whereby he has awarded a sum of Rs.2,29,602/- towards compensation in favour of respondent No.1-a labourer for the injuries suffered by him.

Civil Miscellaneous Appeal No.251 of 2005 is filed by the New India Assurance Company Limited, represented by its Divisional Manager, Ranigunj, Secunderabad, against award, dated 07.09.2004 in W.C.Case No.16 of 2004 on the file of learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad, whereby he has awarded a sum of Rs.4,61,152/- towards compensation in favour of respondent No.1, who was a driver, for the injuries suffered by him.

I have heard Sri Naresh Byrapaneni, learned counsel for the appellants, Sri S.Sudarshan Reddy, learned counsel for respondent No.1 in CMA.No.235 of 2005 and Sri Chandra Sekhar Reddy Gopi Reddy, learned counsel for respondent No.1 in CMA.No.251 of 2005. No one represented respondent No.1 in CMA.No.250 of 2005.

While the appellants have not disputed their liability to pay compensation for the injuries suffered by the workmen, they have, however, raised a very interesting, *nay*, important plea that the respective Commissioners have committed a serious error in taking 100% as loss of earning capacity in each of these cases though the assessed disability by the doctors, who examined the workmen, varies between 40% to 50% in each case. Before proceeding further, it is relevant to note the details of injuries suffered by the claimants in each of the cases, which are herein below:

CMA.No.235 of 2005

1. Visfrance's fracture dislocation right fore foot.
2. Fracture of basis of 2nd, 3rd and 4th metatarsal of right foot.
3. Dislocation of carpo metacarpal joint of hand
4. Closed fracture of the lower pole of the right patella.

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CMA.No.250 of 2005

1. Laceration 'V' shaped 4 cm x ½ cm on the left temporal region of the skull.

2. Abrasion over the nose 2 cm x 1 cm.
3. Abrasion 4 cm x 2 cm over right and left knee.
4. Contusion 4 cm x 4 cm back of the neck.

CMA.No.251 of 2005

Close fracture of right femur.

In CMA.No.235 of 2005, the doctor, who was examined as A.W-2, has assessed the disability of the claimant at 45%.

In CMA.No.250 of 2005, the doctor, who was examined as P.W-2, has assessed the disability of the claimant at 50%.

In CMA.No.251 of 2005, the doctor, who was examined as A.W-2, has assessed the disability of the claimant at 40%. However, he did not speak to the percentage of loss of earnings.

In all these cases, the respective Commissioners have assessed the loss of earning capacity at 100%.

Sri Naresh Byrapaneni, learned counsel for the appellants, has submitted that the Commissioners have committed serious error in awarding compensation taking loss of earning capacity as 100%, in the absence of any evidence in order to show that the permanent disablement suffered by the claimants has reduced their earning capacity in other employments which they were capable of undertaking at that time. He has further submitted that even in case of injuries included in Part-II of Schedule-I, the maximum percentage of loss of earning capacity is 90% and it varies from 3% to 90%. He has further submitted that unless the doctor has assessed

the cumulative effect of all the injuries leading to loss of 100% earning capacity, the Commissioners ought not have awarded compensation based on loss of earnings at 100%.

Sri S.Sudarshan Reddy, learned counsel for respondent No.1 in CMA.No.235 of 2005 and Sri Chandra Sekhar Reddy Gopi Reddy, learned counsel for respondent No.1 in CMA.No.251 of 2005 sought to justify the awards passed by the respective Commissioners.

Sri S.Sudarshan Reddy has submitted that as the evidence of P.W-2-doctor clearly shows that because of the multiple fractures, respondent No.1-driver has incurred the disability to drive the vehicle forever, the Commissioner assessed the loss of earning at 100%.

Sri Chandra Sekhar Reddy Gopi Reddy, learned counsel for respondent No.1 in CMA.No.251 of 2005, has submitted that in addition to the fracture of right femur mentioned by the Commissioner in his award, Ex.A-4-original discharge summary referred to two other injuries, which are minor in nature. He has further submitted that P.W-2 in his disability certificate has not referred to the loss of percentage of earnings and that he has also not referred to the said aspect in his evidence. He has, therefore, sought for remand of the case to the Commissioner for fresh consideration on the nature of loss.

I have carefully considered the respective submissions of learned counsel for the parties with reference to the material on record.

The following Points emerge for consideration in these appeals:

- 1. What is the basis for computation of compensation in respect of non-schedule injuries?
 2. Whether the percentage of disability is the sole criterion for assessing the loss of earnings in case of non-schedule injuries? And
 3. Whether the percentage of loss of earnings in case of non-schedule injuries shall not exceed the percentages prescribed for Part-II of Schedule-I injuries?
 4. Whether the award of compensation by the respective Commissioners is proper and correct?

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Relevant provisions:

The Workmen's Compensation Act 1923 (renamed as Employees' Compensation Act) (for short "the Act"), provides for payment of compensation by certain classes of employers to their workmen for injury by accident. Section 3 of the Act enjoins on the employer liability to pay compensation in respect of personal injury caused to a workman by accident arising out of and in the course of his employment in accordance with Chapter-II. Section 4 specifies the amount of such compensation. Clause (a) of sub-section (1) of Section 4 of the Act prescribed compensation in case of death resulting from injury; clause (b) prescribed compensation in case of permanent total disablement resulting from the injury; clause (c) prescribed compensation where permanent partial disablement results from the injury; and clause (d) prescribed compensation

for temporary disablement, whether total or partial, resulting from the injury. Schedule-I comprises two parts i.e., Part-I and Part-II. Part-I contains list of injuries deemed to result in permanent total disablement. In cases of all these injuries, it has prescribed percentage of loss of earning capacity at 100%. Part-II contains the list of injuries deemed to result in permanent partial disablement. It has prescribed percentage of loss of earning capacity varying between 1 and 90 depending upon the nature of permanent partial disablement. Schedule-IV envisaged factors for working out the lumpsum equivalent of compensation amount in case of permanent disablement and death.

Section 2(g) of the Act defined “partial disablement” and Section 2(l) defined “total disablement”. It is useful to reproduce these provisions as under :

“Partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time:

Provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.”

“Total disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more”

Analysis of the provisions:

The Act prescribed fixed parameters for assessing compensation in respect of death. In this category of cases, clause (a) of sub-section (1) of Section 4 provided that an amount equivalent to 50% of the monthly wages of the deceased workman multiplied by the relevant factor, or an amount of Rs.80,000/-, whichever is more, is to be determined as compensation. In case of permanent total disablement also, a similar provision is made in clause (b) of sub-section (1) of Section 4. The only variation between these two categories of cases is with reference to the percentage of monthly wages to be determined and the minimum amount payable. Interestingly, in case of permanent total disablement resulting from injury, the percentage of monthly wages to be determined and the minimum amount payable, is fixed at higher level than that prescribed for death resulting from the injury. Schedule-IV provided for relevant factors in case of both death and permanent disablement. All that the Tribunal needs to do for assessing the compensation in both these categories of case is to determine the wages, apply the formula contained in Section 4(1)(a) or (b) of the Act, as the case may be and fix the relevant

factor under Schedule-IV applicable to the case on hand. In case of permanent partial disablement, compensation has to be fixed as per clause (c) of sub-section (1) of Section 4 of the Act. This provision, to the extent it is relevant, is reproduced below:

Where permanent partial disablement results from the injury	(i) In case of an injury specified in Part II of Schedule I, such percentage of the 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, and
	(ii) In case of an injury not specified in Schedule I, such percentage of the compensation 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.

Explanation I: Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II: In assessing the loss of earning capacity for the purposes of sub-clause (ii), 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.

For determining compensation in case of an injury specified in Part-II of Schedule-I resulting in permanent partial disablement, the Tribunal has to adopt the same procedure as in cases of injuries resulting in permanent total disablement included in Part-I, with the only modification that the percentage of loss of earning capacity prescribed under Part-II must be applied instead of 100% loss of earning capacity as prescribed for Part-I injuries. However, in case of injuries not specified in Schedule-I falling in sub-clause (ii) of clause (c) of sub-section (1) of Section 4, no specific percentages of loss of earnings are prescribed. What this provision provides for is that in all cases of injuries not specified in Schedule-I, compensation is payable as in the case of compensation payable for permanent total disablement in proportion to the loss of earning capacity as assessed by the qualified medical practitioner, but however, the compensation so assessed shall not exceed the amount payable if permanent total disablement had resulted from the injuries. Therefore, in this category of cases, the Tribunal has to exercise its sound discretion while considering the nature of permanent partial disability with reference to the loss of earning capacity as assessed by the qualified medical practitioner. Thus, the cases of non-schedule injuries resulting in permanent partial disablement present considerable amount of difficulty for

the Tribunal in making proper assessment of loss of earnings.

Re Point Nos.1 & 2: In the backdrop of the discussion undertaken above, these Points need to be considered. The word 'disability' or 'disablement' connotes loss of capacity to perform an activity. In case of permanent disablement, the loss is for the entire life and in case of temporary disability, the loss would be for a limited period.

In **Raj Kumar Vs. Ajay Kumar**^[1] the Apex Court while dealing with the word 'disability' held :

“Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily involvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('the Disabilities Act', for short). But if any of the disabilities

enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.”

A lurking doubt the Tribunals often entertain and they also err on is whether the permanent partial disablement suffered by a workman due to a non-schedule injury resulting in his inability to perform the work which he was performing at the time of accident entails assessment of 100% loss of earning capacity? The answer to this lies in the very definition of “partial disablement” in Section 2(g) reproduced above. This provision defined temporary and permanent disablement, separately. In the former case, the disablement is with reference to any employment he was undertaking at the time of accident i.e., in case of a driver, the disablement is with reference to his loss of capacity to drive. Whether such disablement is total or partial, under clause (d) of Section 4(1), a half monthly payment of the sum equivalent to twenty-five percent of monthly wages of the workman has to be paid in accordance with the provisions of sub-section (2) of Section 4 of the Act. It is immaterial whether the workman who suffered temporary disablement is capable of performing any work other than driving for the purpose of award of compensation. However, in contrast, in case of permanent partial disablement, the loss of earning capacity must be assessed not only with reference to the work/employment he was undertaking at the time of accident, but also qua “every

employment which he was capable of undertaking at that time". To illustrate, a driver has suffered injury resulting in his permanent partial disablement. If such disablement totally affected his capacity to drive, but did not affect his capacity to perform any other work which does not involve driving, the loss of earning capacity cannot be taken as 100%, but the same must be assessed keeping in view his capacity to perform any other work. The Legislature has consciously used different phraseology while defining 'temporary disablement' and 'permanent disablement'. With regard to temporary disablement, the reduced earning capacity must be judged with reference to "any employment in which he was engaged at the time of the accident" while in case of permanent disablement, the reduced earning capacity must be assessed with reference to "every employment which he was capable of undertaking at that time". The Tribunals must always keep this distinction in mind and examine whether the permanent partial disablement, suffered by the workman has reduced his earning capacity in that employment which he was engaged at the time of accident alone or in every other employment which he was capable of undertaking at the time of accident.

In National Insurance Company Ltd. Vs. D. Shiv Shankar and another ^[2] this Court had the occasion to consider the above discussed aspect and it has held as under :

"Another important aspect to be borne in mind is that the disability or L.E.C., must not be assessed,

exclusively with reference to the work or employment, which the employee was discharging at the relevant point of time. The definition of the words “partial disablement and total disablement” under Section 2(g)(l) of the W.C. Act indicate that, it is the incapacity suffered by the employee to do “all work which was capable of performing”, and not his specific work that he was engaged in, at the time the incident occurred. The consideration cannot be confined to the employment, in which the employee was placed, when he received the injury. The fact that the employee is capable of doing any other work, perfectly, notwithstanding his disability to continue in the same employment in which he was engaged, when he received injuries, becomes a relevant factor to be taken into account.”

Loss of earnings vis-à-vis the percentage of disability: This is another area which creates problem in assessing the compensation. In **Raj Kumar (1-supra)**, the Apex Court made a thorough analysis of the concept of permanent disability and its relation with loss of earnings. It is useful to reproduce the relevant portion of the Judgment hereunder :

“The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80%

plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. (Emphasis added)

What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for

determination of compensation (See for example, the decisions of this Court in *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd.*(2010) 10 SCC 254 and *Yadava Kumar Vs. National Insurance Co. Ltd.*(2010) 10 SCC 341.)”

In **National Insurance Company Limited Vs. Musabir**

Ahmed^[3] the Supreme Court held that loss of earning capacity is not a substitute for percentage of physical disablement and that it is one of the factors taken into account.

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Conclusion on Point Nos.1 & 2:

- (i) Assessment of compensation shall be based on assessment of loss of earning capacity. While making such assessment, the disability caused not only with respect to the work being performed by the workman at the time of accident, but also with respect to any other work which he was capable of performing at that time, shall be considered.
- (ii) The evidence of the qualified medical practitioner shall form basis for fixing the percentage of loss of earning capacity, coupled with the oral and documentary evidence that may be adduced by the claimants.
- (iii) Percentage of disability and percentage of loss of earning capacity cannot be equated with each other. While the percentage of disability may throw light on

loss of earning capacity to some extent, the latter depends on other factors also, such as, the nature of the injury, the limb affected by the injury, the impact of such injury on the employment of the workman and the loss of his future prospects to undertake any other employment etc.

Re Point No.3: In considering this Point, Explanations I and II to Section 4(1) assume great relevance. Explanation I contains a legislative injunction against award of compensation in excess of what is prescribed for permanent total disablement (Schedule I, Part-I injuries) in case of injuries not specified in Schedule I. However, such a bar is not envisaged vis-à-vis Part II of Schedule I injuries.

In **New India Assurance Company Ltd. Vs. Abdul Khader Jilani @ Jilani and another**^[4], a Division Bench of this Court, of which I am a party, held that there is nothing in the plain language of Section 4(1)(c)(ii) from which it can be inferred that in the case of an injury not specified in Schedule-I, compensation is to be paid keeping in view the entries contained in Parts-I and II of Schedule-I; that the very fact that the Legislature has designedly omitted reference to any part of Schedule I in Section 4(1)(c)(ii) indicates that the entries contained in those parts do not control the exercise of discretion of the competent authority in the matter of award of compensation, which, as mentioned above, is required to be

determined keeping in view the loss of earning capacity as assessed by the qualified medical practitioner; and that if the Legislature wanted that in the case of an unspecified injury, the amount of compensation should be awarded with reference to the entries contained in Parts I and II of Schedule I, then the provision of Section 4(1)(c)(ii) would have been differently worded.

However, Explanation II ordains that in assessing the loss of earning capacity, 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.

Conclusions on Point No.3: On a careful analysis of Explanations I and II, what emerges is while assessing compensation for non-schedule injuries, such assessment shall not exceed compensation payable for injuries included in Part I of Schedule I (permanent total disablement). However, while this cap on compensation is not placed with reference to Part II of Schedule I injuries, nevertheless, while making assessment, due regard must be had to the percentage of loss of earning prescribed for the injuries included in the said provision. This means, while in a given case the aggregate of all the non-schedule injuries may exceed the percentage of loss of income prescribed for Part II injuries, the Tribunal must always exercise its sound discretion in arriving at the compensation payable for non-schedule injuries keeping in view the percentage of loss of earnings prescribed for the corresponding injuries in Part II of

Schedule I.

Re Point No.4: In C.M.A.No.235 of 2005, the claimant examined himself as AW-1 and also examined one Dr. S. Venkata Raman as AW-2. In his deposition, the claimant has testified that due to the injuries sustained by him, he has lost his total earning capacity and that he is unable to perform his any duties as a driver. In his cross-examination, he has deposed that he is not working anywhere. AW-2 deposed that he is a qualified medical practitioner in orthopaedics; that on being approached by AW-1, he has issued the disability certificate on 18-8-2004; and that due to the fractures suffered by the claimant, he has developed restricted movements and pain, pus discharged from the right foot and he also developed restriction and weakness of right hand grip and restriction of flexion of right knee. AW-2 has assessed the disability of the claimant as 45% based on MC Bride scale. He has further deposed that due to the said deformities, the claimant developed difficulty in driving a vehicle as he will not be in a position to apply accelerator and brake and because of weakness of grip of the right hand the claimant will not be in a position to drive heavy vehicle and that accordingly his loss of earning capacity is to be taken as 100%.

What is of significance in the evidence of both the witnesses is that they have spoken on the disability suffered by the claimant as a driver. Neither of them has deposed that the disablement has reduced the claimant's earning capacity in

every employment which he was capable of undertaking at that time. As noted above, the claimant has merely stated that he is not working anywhere else, from which it can be inferred that though he is capable of undertaking works other than driving, he is not undertaking such works. In order to be entitled for 100% loss of earning, it is necessary for the claimant to prove that he was not only disabled to drive, but also to perform any other work which he was capable of performing at the time of accident. The Commissioner has therefore committed a serious error in taking the loss of earning capacity at 100% without considering the fact that the claimant was capable of performing works other than driving.

Then, the further question arises as to what would be the appropriate percentage of loss of earning capacity of the claimant in this case? Undoubtedly, the work of driving a motor vehicle involves skill and drivers are paid higher salaries/wages than the workmen who are employed for undertaking unskilled works. The claimant being a skilled workman, is not expected to perform any other skilled work, especially at the age of 42 years. Assuming that the claimant would have secured an alternative employment involving unskilled work, the difference of wages between skilled employment and unskilled employment can be reasonably assumed as between 40% to 50%. Therefore, the Commissioner ought to have taken a maximum of 50% as the loss of earning capacity of the

claimant, which will also commensurate with the percentage of disability.

The claimant in C.M.A.No.250 of 2005 was an unskilled labourer engaged in loading and unloading of the tractor/trailer. From the very nature of the injuries, it can be seen that he has not suffered serious injuries such as fractures or dislocations. All that he has suffered was laceration on the left temporal region of the skull, abrasions over the nose and left knee and contusion on the neck. Though PW-2, the Doctor, has described the injuries as grievous in nature and stated that the claimant was treated at the Osmania General Hospital for vital injury to the spinal cord, no evidence in support thereof has been adduced. Ex.A-3 wounds certificate does not refer to any injury to the spinal cord of the claimant. PW-2 has assessed the disability at 50% and has deposed that the claimant cannot carry weights and undertake the job of a labourer. Based on this evidence, the Commissioner has taken the percentage of loss of earning capacity of the claimant at 100%.

In this case also, the Commissioner has committed the same error as in C.M.A.No.235 of 2005. From the nature of the injuries, I have a serious doubt on the veracity of the evidence of PW-2 and his assessment of the disability at 50%. Injuries such as lacerations, abrasions and contusions cannot cause permanent partial disability causing loss of earning capacity permanently. At best, the nature of the injuries suffered by the claimant may cause disablement of temporary nature. The

Commissioner has mechanically accepted the testimony of PW-2 which appears to be highly subjective and interested intended to support the claimant for award of higher compensation.

Though ordinarily, the opinion of a Doctor has a high persuasive evidentiary value, the Tribunal cannot accept every such opinion as gospel. It has to carefully examine the nature of injuries and evaluate the opinion of the Doctor. If the opinion of the Doctor looks so absurd having regard to the nature of injuries even to a layman, such opinion is liable to be rejected, albeit, by assigning sound reasons therefor. As discussed above, it is preposterous for PW-2/Doctor to depose that the injuries suffered by the claimant could cause permanent partial disability. What is more astounding is that based on such evidence, the Commissioner has assessed the loss of earning capacity at 100%. At best, the disablement suffered by the claimant can be treated as of temporary nature, reducing his earning capacity in any employment in which he was engaged at the time of accident resulting in the disablement. In such cases, the provisions of clause (d) of Section 4(1) of the Act are attracted and the claimant will be entitled only to half the monthly payment of the sum equivalent to 25% of the monthly wages of the workman to be paid in accordance with the provisions of sub-section (2).

In C.M.A.No.251 of 2005, Ex.A-4 disability certificate issued by AW-2 has assessed the disability at 40%. In his

evidence, AW-2 has deposed that the claimant has suffered fracture of right femur, for which nailing was done due to which the claimant has developed moderate stiffness in his right knee and the range of movement of the knee joint is 0° to 85° and due to the said problem, he cannot sit and squat on the ground; that he cannot walk long distances and that as a driver, he cannot drive a vehicle. The evidence thus discloses that the claimant who is a driver cannot drive as in the case of the claimant in C.M.A.No.235 of 2005. The Commissioner has however assessed the loss of earning capacity at 100%. For the reasons discussed above, the approach the Tribunal suffers from the fundamental error as it has failed to take into consideration whether the claimant is rendered incapable of undertaking any work other than that of driving. For the same reasons as are assigned in case of the claimant in C.M.A.No.235 of 2005, the loss of earning capacity will not exceed 50%. Having regard to the nature of the injuries, no purpose will be served by remanding the case for recording further evidence of the doctor.

In the result, the Civil Miscellaneous Appeals are disposed of in the following terms:

- (a) The award in W.C.No.24 of 2004, corresponding to C.M.A.No.235 of 2005, is modified by reducing the compensation awarded by the Commissioner to 50%.
- (b) In W.C.No.35 of 2002, corresponding to C.M.A.No.250

of 2005, award of compensation by the Commissioner is set-aside. The case is remanded to the Commissioner by directing recalculation of compensation treating the disablement suffered by the claimant therein as of temporary nature and by applying the provisions of clause (d) of sub-section (1) of Section 4 of the Act.

- (c) The award in W.C.No.16 of 2004, corresponding to C.M.A.No.251 of 2005, is modified by reducing the compensation awarded by the Commissioner to 50%.

Justice C.V. Nagarjuna Reddy

Date : 27-02-2015

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[\[1\]](#) (2011) 1 SCC (Civ) 164

[\[2\]](#) 2006(4) ALD 398

[\[3\]](#) (2007) 2 SCC 349

[\[4\]](#) 2007(4) ALT 607 (DB)