

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3632 of 2004

JUDGMENT:

This appeal is preferred against order dated 04.06.2004 in W.C.No.46 of 2002 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur (for short, 'lower Authority'), whereunder, lower Authority granted compensation of Rs.39,754/- as against the claim of Rs.2,50,000/-.

2. Brief facts leading to this appeal are as follows:

Appellant herein submitted application to the lower Authority contending that he worked as driver on lorry bearing No.AIL 3894 belonging to 1st respondent herein which is insured with 2nd respondent herein and during the course of his employment, he sustained injuries on 18.05.2000. He contended that he was aged 21 years and getting Rs.4,000/- per month and entitled for a compensation of Rs.2,50,000/-.

3. Insurance Company resisted the claim of appellant.

4 .The lower Authority conducted enquiry during which, two witnesses are examined and six documents are marked on behalf of appellant and one witness is examined and four documents are marked on behalf of Insurance Company and on a overall consideration of oral and documentary evidence, lower Authority granted Rs.39,754/- by taking minimum wages of appellant at Rs.2,734/- and loss of earning capacity at 15%. Aggrieved by the same, claimant preferred the present appeal.

5. Heard both sides.

6. Advocate for appellant submitted that the lower Authority erred in fixing loss of earning capacity at 15% instead of 100%. It is further submitted that lower Authority took the percentage of disability as

loss of earning capacity, which is not correct, therefore, the award of lower Authority has to be modified by fixing appropriate loss of earning capacity.

7. On the other hand, advocate for Insurance Company supported the order of lower Authority and contended that loss of earning capacity was rightly considered and that there are no grounds to interfere.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 04.06.2004 in W.C.No.46 of 2002, of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, is legal, proper and correct?

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POINT :

9. There is no dispute with regard to accident and relationship of employee and employer between appellant and 1st respondent herein. Admittedly, during course of employment, appellant sustained injuries and the policy is in force as on the date of accident. The Medical Officer, who treated the injured, is examined as AW.2 and he deposed that there was malunited fracture of right radius at the junction of middle third and lower third and the deformity is at the right wrist with terminal degrees of restriction of movements. He deposed in view of the malunited fracture on right radius, he assessed the disability at 15% and due to restriction of movements of fore arm the patient can drive the vehicle with difficulty. He also deposed the patient cannot perform duties of driver efficiently as he was doing earlier. He deposed that restriction movement of right wrist is not a scheduled injury. Now the objection of appellant is that 15% is only with regard to disability, but with regard to loss of earning capacity, the lower Authority committed error in taking the same percentage. As seen from the material, no evidence is adduced on behalf of appellant showing the effect of loss of earning capacity, like on

account of this injury appellant is getting less salary or less work as he was getting prior to accident. The lower Authority while assessing the evidence observed that as per Doctor's evidence, appellant cannot perform duties as efficiently as he was discharging prior to accident, which means there is no complete disablement of profession on account of injury. By taking this restricted movement and also on physical examination of appellant in the open Court, the lower Authority fixed the loss of earning capacity at 15% and I do not find any wrong approach by lower Authority because there was no evidence on behalf of appellant showing the loss of earning capacity. When such evidence is not there, the medical evidence would only discloses that appellant can drive the vehicle with difficulty and assessed that difficulty with the percentage of partial and permanent disability in my view the lower Authority has not committed any error in fixing the loss of earning capacity.

10. For these reasons, the appeal is dismissed as devoid of merits. No costs.

11. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

9th April 2015.

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