

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A.No.3861 of 2004

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JUDGMENT

This appeal is directed against order dated 20.07.2004 in W.C.No.70 of 2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, where-under a sum of Rs.1,56,047/- was granted as compensation and Rs.313/-as stamp duty as against the claim of Rs.5,00,000/-.

2. The brief facts leading to this appeal are as follows;

The appellant herein is claimant. He submitted an application to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, alleging that he worked as driver on lorry bearing No.AP 7T 9039 belonging to first respondent herein and during the course of his employment on the intervening night of 10/11.12.2000, he sustained injuries due to accident of said vehicle in Orissa State. He submitted that he was getting Rs.4,000/-per month as wages as on the date of accident and due to accident, he lost his earning capacity and entitled for compensation of Rs.5,00,000/-.

3. Insurance Company resisted the claim of appellant contending that he should prove that he sustained disability and that injuries were due to accident in the course of employment.

4. On these contentions and rival contentions, the lower authority conducted enquiry, during which, two witnesses were examined and 8 documents were marked on behalf of the appellant. No witness was examined and no document was marked on behalf of insurance company.

5. On consideration of oral and documentary evidence, the lower authority fixed compensation of Rs.1,56,047/- by taking the wages of appellant at Rs.3,070/- as per the Minimum Wages Act, 1948 and loss of earning capacity at 40%. Now, aggrieved by the quantum, claimant preferred the present appeal.

6. Heard both sides.

7. Advocate for appellant contended that the lower authority erred in taking loss of earning capacity at 40% and it ought to have taken 100% loss of earning capacity as per Section 4(1) of Workmen's Compensation Act. He further submitted that as per the decision of this Court in **N. SREE RAMULU @ SREE RAMA MURTHY v. B. LAKSHMI NARAYANA** the loss of earning capacity has to be fixed on the basis of the disablement for doing his earlier profession and the lower authority has not properly considered the medical evidence in fixing the loss of earning capacity and it ought to have taken at least 75% as loss of earning capacity by considering the restricted movement of knee, and therefore, the order of the lower authority has to be modified.

8. Advocate for insurance company submitted that the lower authority has rightly fixed loss of earning capacity at 40% by considering the evidence on record and that there are no grounds to interfere with the findings of the lower authority. He further submitted that as the appellant can eakout his livelihood by resorting to other works, it cannot be accepted that he lost his earning capacity by 100%.

9. Now the point that would arise for consideration is:

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

10. **POINT:**

There is no dispute with regard to relationship of employer and employee between appellant and first respondent herein. From the evidence of A.W.1 and documents Exs.A1 to A7, it is clear that the appellant received injuries in the accident that took place on 11.12.2000 near Gouripatnam of Orissa State during the course of his employment. Medical Officer, who was examined as A.W.2, deposed that the appellant was treated as inpatient and in spite of treatment, he is having non-union of right patella and mal-union of left femur and because of these two disabilities, he sustained partial permanent disability of 25%. He deposed that he is having restricted movements of hip and knee

and he is not fit for driving. He also deposed that right knee is also restricted, and for this reason, he is not fit for vehicle driving. Though this witness was cross-examined on behalf of the insurance company, except putting suggestions, nothing could be elicited from him to discard his testimony with regard to assessment of disability.

11. Admittedly, the appellant was driver and he has restricted knee movement due to injuries, which is hurdle to get along with his profession. In view of the submissions of both sides and considering the nature of injuries and the percentage of disability as per the evidence of Medical Officer, I feel that the percentage of loss of earning capacity can be fixed at 75% as suggested by the Advocate for the appellant. If the quantum is calculated by taking the wages as fixed by the lower authority with 75% loss of earning capacity it would come to Rs.2,92,587/- ($\text{Rs.}3070 \times 60 / 100 \times 211.79 \times 75 / 100$) Therefore, claimant is entitled for a sum of Rs.2,92,587/- as compensation and the appeal has to be allowed partly by enhancing compensation from Rs.1,56,047/- to Rs.2,92,587/-. The insurance company shall deposit the difference compensation amount within six weeks from the date of receipt of a copy of the order, failing which the insurance company is liable to pay interest at 12% per annum.

12. Accordingly, the appeal is allowed in part. There shall be no order as to costs. Miscellaneous Petitions, if any pending, in this appeal, shall stand closed.

S. RAVI KUMAR, J

1st April, 2015

sj