

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1809 OF 2004

Dated 20th March, 2015

Between:

Kamineni Seetarama Mohana Rao.

...Appellant.

And:

P.Satyanarayana and another.

...Respondents.

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JUDGMENT:

This appeal is preferred challenging the order dated 22-3-2004 in W.C.No.8 of 2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna District.

Brief facts leading to this appeal are as follows:

Claimant who is appellant herein submitted application to the Commissioner for Workmen's Compensation contending that he was employed as driver on a monthly salary of Rs.1500/- on lorry bearing No.AP16T.1626 belonging to first respondent herein and during course of employment on 28-9-1995, due to accident, he sustained injuries i.e., fracture to right hand, multiple fracture to right leg and claimed a sum of Rs.3,00,000/- as compensation with interest.

Insurance company opposed the claim contending that claimant has to strictly prove his employment under first respondent herein and whether he got a valid licence at the time of accident.

On these contentions, lower authority conducted enquiry, during which, two witnesses were examined and eight documents were marked on behalf of claimant. No witnesses were examined and no documents were marked on behalf of Insurance Company.

On an overall consideration of oral and documentary evidence, lower authority granted Rs.1,25,622/- as against the claim of Rs.3,00,000/-. Aggrieved by the quantum, claimant preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that appellant is a driver and because of amputation to right leg below hip, he became permanently disabled and he can never drive a lorry and therefore, lower authority ought to have taken loss of earning capacity at 100% but it only took the disability as assessed by the medical board in calculating compensation and to that extent, lower authority committed error.

He further submitted that as per the provisions of the Act, compensation awarded has to be deposited within 30 days and failure to comply the same, opposite party is liable to pay interest but such default order is not passed by the lower authority and in this case, compensation was not deposited within 30 days and for these reasons, order of the lower authority has to be modified.

Other side supported the order of the lower authority.

Now the point that would arise for my consideration in this appeal is whether the order impugned is proper, legal and correct?

POINT:

There is no dispute with regard to accident. There is also no dispute that amputation was done to the right leg of the appellant. Admittedly, appellant is a driver and as rightly pointed out by advocate for appellant, he can never drive vehicle because of amputation to his right leg below hip joint.

As seen from the material, Medical Board assessed the disability of the injured at 70% and while calculating compensation, lower authority took the same.

This court in *N.SREE RAMULU @ SREE RAMA MURTHY v. V.LAKSHMI NARAYANA AND ANOTEHR* 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.

When the percentage of disability is different from percentage of loss of earning capacity for calculating compensation, loss of earning capacity is the criteria.

As seen from the evidence of Medical Officer, he clearly stated that appellant cannot drive on account of amputation.

In fact, according to his evidence, loss of earning capacity is 90%. Amputation at hip is listed at Serial Number 16 in Schedule I Part 2 of the Act where it is shown as 90%. So, the evidence of P.W.2 with regard to percentage of loss of earning capacity is in conformity with the percentage of loss of earning capacity indicated in Schedule I Part 2 of the Act. So, considering the same, percentage taken by lower authority at 70% cannot be accepted and it has to be modified to 90%. If a calculation is made by taking loss of earning capacity at 90% on the same salary and multiplier taken by the lower authority, it comes to Rs.1,61,514/-(Rs.1500/-x60/100/-x 199.40 x 90/100) and therefore, appellant is entitled for compensation of Rs.1,61,514/- and difference amount has to be deposited by the Insurance Company i.e., second respondent herein within 30 days.

One of the contentions raised is that lower authority has not granted interest in case it is not deposited within 30 days and that the amount awarded by lower authority is not deposited within the statutory period of 30 days.

Considering the same, if the amount is not deposited within 30 days from the date of order of the lower authority, the claimant is entitled for interest at 12%p.a., till the date of deposit.

This appeal is accordingly allowed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 20th March, 2015.

Dvs

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