

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2067 of 2004

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Date:31.03.2015

Between:

The Depot Manager,
APSRTC, Asifabad Depot
District Adilabad.

... Appellant.

AND

Pulgam Swamy and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.2067 of 2004

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JUDGMENT:

This appeal is preferred against order dated 15-04-2003 in W.C.No.3/2001 on the file of Commissioner for Workmen's Compensation-cum-Commissioner of labour, Adilabad, whereunder Commissioner of Labour, Adilabad granted compensation under Workmen's Compensation Act to the first respondent herein. Aggrieved by which, employer preferred present appeal.

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

On 20-09-1998, bus bearing No.AP-10Z-440 was allotted to first respondent herein as driver on route from Karimnagar to Asifabad and the driver i.e., first respondent herein sustained injuries in an accident and that he was admitted in NIMS, Hospital at Hyderabad, but he was partly cured and the Medical Officer certified that the first respondent herein is unfit for the post of driver and on that, first respondent herein filed an application claiming compensation of Rs.2,30,568/- and the lower authority granted total compensation of Rs.4,42,328/-

(Rs.2,30,568/- with interest at 18% i.e., Rs.1,86,760/-+ penalty for undue delay Rs.25,000/-). Aggrieved by which, the present appeal is preferred.

3. Heard arguments.

4. Advocate for appellant submitted that the lower authority erred in taking loss of earning capacity at 100% though the disability is only 30% as per the medical evidence. He submitted that the first respondent herein is provided with alternative job by the same employer, therefore, the contention that there is loss of earning

capacity of 100% cannot be sustained. He further submitted that the lower authority granted interest at 18%, though as per the provisions of the Act, the interest rate is only 12% and therefore, the order of the lower authority has to be modified.

5. Other side supported the order of the lower authority and contended that the loss of earning capacity taken by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad is absolutely correct.

6. Now the point that would arise for my consideration in this appeal is whether the order of lower authority is legal, proper and correct?

7. **Point:-** I have perused the material on record. There is no dispute with regard to accident and the injury sustained by first respondent herein. The very same point that the first respondent is provided with a job of Shramik was raised before the lower authority, but considering the medical evidence that the first respondent is unfit for the post of driver, lower authority took the loss of earning capacity at 100%. It is not in dispute that percentage of disability is different from percentage of loss of earning capacity. The lower authority by relying on a judgment of this Court in **Oriental Insurance Company Limited vs. Koti Reddy and another**, took the loss of earning capacity at 100%, since the first respondent was declared as unfit to be a driver, which post he was doing prior to the accident.

The objection of the appellant with regard to loss of earning capacity was discarded by the lower authority as the first respondent became totally disabled. Therefore, I do not find any wrong in the order of the lower authority in fixing 100% loss of earning capacity.

8. Now coming to the other objection, according to appellant, the lower authority granted interest contrary to the rate of interest

mentioned in the Act. As rightly pointed out by the Advocate for appellant rate of interest indicated in Section 4 of Workmen's Compensation Act is 12%, but the lower authority has granted 18% without any proper justification. Therefore, the order of the lower authority to that extent has to be modified by reducing the rate of interest from 18% to 12%.

9. For these reasons, appeal is partly allowed modifying the rate of interest from 18% to 12% by confirming the other findings of the lower authority. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:31.03.2015

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