

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3128 of 2004

JUDGMENT:

This appeal is preferred against orders dated 20.02.2004 in W.C.No.115 of 1999 on the file of Commissioner for Women's Compensation & Assistant Commissioner of Labour, Nizamabad District, whereunder, he granted compensation of Rs.91,498/- as against claim of Rs.3,00,000/-.

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

Appellant herein submitted application to Commissioner for Workmen's Compensation contending that he was working as a labourer on lorry bearing No.ATK 3175 belonging to 1st respondent herein insured with 2nd respondent herein and on 31.10.1998, while he was loading goods into the lorry at about 11.00 p.m., the driver suddenly drove the lorry due to which he fell down from the lorry with load and sustained fracture of right leg, fracture of ribs besides multiple grievous head injuries and also injuries all over the body. He contended that he was drawing Rs.3,000/- per month as salary as labourer besides batta of Rs.50/-per day and that he is entitled for compensation of Rs.3,00,000/-.

3. Insurance company filed counter disputing the claim of appellant and the lower authority after considering the oral and documentary evidence, granted compensation of Rs.91,498/- by taking wages of injured at Rs.1800/- per month and loss of earning capacity at 50%. Aggrieved by the quantum, claimant preferred present appeal.

4. Heard arguments.

5. Advocate for appellant submitted the lower authority

failed to consider that appellant was getting Rs.3,000/- per month besides batta of Rs.50/- and only Rs.1800/- per month is taken as salary and the same is not correct. It is further contended that the lower authority is erred in taking loss of earning capacity at 50% contrary to the medical evidence. He submitted that the appellant is entitled for Rs.3,00,000/- and the claim of the appellant is just and reasonable. He further submitted on account of this injury, claimant lost his job and taking the same into consideration his claim for Rs.3,00,000/- may be considered.

6. Other side supported the order of the lower authority.

7. Now the point that would arise for my consideration is:

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

POINT:

8. It is the contention of appellant that he sustained injuries during course of employment in a accident that occurred on 30.10.1998. Claimant is examined as PW.1 and he deposed in his evidence supporting his claim for Rs.3,00,000./-. Medical officer is examined as PW.2 and disability certificate issued by him is marked as Ex.A4. Medical Officer deposed in his evidence that appellant sustained fracture of neck right femur with painful limping. He deposed that he assessed partial and permanent disability at 65% and the loss of earning capacity at 75%. He deposed that he issued certificate after clinical and physical examination of patient. Though this witness was cross- examined, except putting suggestions, nothing was elicited from him to discard the disability assessed by him. The lower authority while considering the evidence of PW.2 observed that as the disability certificate was issued four years after the accident, loss of earning

capacity assessed by medical officer cannot be accepted and on that ground he has reduced the loss of earning capacity to 50%.

9. But as seen from order, no reasons much less valid reasons are there in the order of lower authority for such a reduction. When the medical officer even after four years of the accident found that there was 65% partial and permanent disability and assessed the loss of earning capacity as 75% discarding it without any proper material from other side, in my view is not a correct approach.

10. As seen from the evidence of PW.2, except making general suggestions, nothing was elicited from the medical officer to doubt the assessment arrived at both for disability and for loss of earning capacity. So as rightly pointed out by advocate for appellant the lower authority committed error in not taking the loss of earning capacity as assessed by the medical officer for computing the compensation

11. For these reasons, I am of the view that compensation has to be modified by taking the loss of earning capacity as assessed by the medical officer and if a calculation is made by taking wages at Rs.1800/- and loss of earning capacity at 75%, it would come to Rs.1,37,246.40 ps ($\text{Rs.1800} \times 60\% \times 169.44 \times 75\% = 1,37,246.40\text{ps.}$) which is rounded to Rs.1,37,246/-. Thus, the appellant is entitled for difference of compensation amount and the insurance company shall deposit the same within thirty (30) days from the date of receipt of this order.

12. Accordingly, the Civil Miscellaneous Appeal is partly allowed by enhancing compensation from Rs.91,498/- to Rs.1,37,246/-. Both parties shall bear their own costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 20-03-2015.
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