

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1712 of 2004

JUDGMENT:

This appeal is against order dated 11.02.2004 in W.C.No.31 of 2002 on the file of the Commissioner for Workmen Compensation and Assistant Commissioner of Labour Circle-II, Guntur, whereunder, he granted Rs.39,237/- as compensation as against the claim of Rs.3,00,000/- for the injuries sustained by appellant-claimant in an accident during course of employment.

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

Appellant herein submitted petition to the Commissioner for Workmen Compensation i.e., Assistant Commissioner of Labour Circle-II, Guntur, contending that he was working as driver on lorry bearing No.AEE 5722 and while proceeding from Macherla to Bandarupalligudem with load of Napa Stones, his lorry met with accident and in the said accident he sustained injuries including fracture of his right wrist and that he was drawing a salary of Rs.4,000/- per month and that he is entitled for compensation of Rs.3,00,000/-.

3. Insurance Company opposed the claim and contended that there is no liability for the Insurance Company to pay any compensation due to violation of policy conditions and terms.

4. The Assistant Commissioner of Labour Circle-II, Guntur, during enquiry examined two witnesses and

marked nine documents on behalf of claimant and no one is examined and no documents are marked on behalf of Insurance Company and on a overall of oral and documentary evidence, fixed the compensation at Rs.39,237/- by taking the wages of claimant at Rs.3,353/- . Aggrieved by the quantum, claimant preferred the present appeal.

5. Heard both sides.

6. Now the point that would arises for my consideration in this appeal is:

Whether the order in W.C.No.31 of 2002, of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-II Circle, Guntur, is legal, proper and correct?

POINT :

7. There is no dispute with regard to the accident that took place on 02.06.2002, in which claimant received injuries while working as driver on lorry bearing No.AEK 5722. There is also no dispute with regard to relationship of employee and employer between appellant-claimant and 1st respondent herein. According to claimant, he was drawing Rs.4,000/- per month as salary as on the date of accident. To substantiate the same except relying on his self serving testimony, no other material is produced to prove his salary. Now, the contention of Advocate for claimant is when claimant as AW.1 deposed in his evidence that he was drawing salary of Rs.4,000/- per month, there was no denial of that fact during cross-

examination of AW.1 on behalf of Insurance Company, therefore, the lower Authority ought to have taken salary of claimant at Rs.4,000/- per month. But, the contention of Advocate for claimant cannot be accepted because claimant being an interested witness, he would definitely support his version with regard to salary. What is expected from claimant is he should produce some evidence to support his version with regard to salary. Admittedly, he has not examined the owner, who is the better person to speak about salary being paid to claimant. When there is no positive proof with regard to salary, only the minimum wages payable to the workman has to be taken and the lower Authority rightly took the minimum wages payable to a workman as per G.O.Ms.No.30 dated 27.07.2000 as on the date of accident, therefore, the objection of claimant with regard to salary cannot be sustained.

8. *The second* objection of claimant is that on account of this injury, claimant lost his profession of cleaner and he became unfit to do that job and thereby, the loss of earning capacity has to be taken as 100%. To support this version, there is no evidence on record. The Medical Officer, who examined claimant, has not stated anything in those lines, therefore, the contention that loss of earning capacity is 100% cannot be accepted.

9. Now, the main contention of the advocate for petitioner is that the Medical Officer assessed the

disability at 15%, but the lower Authority has not taken the same while calculating the compensation and he has not even taken any percentage towards loss of earning capacity though there is disability of 15% as per the medical evidence.

10. I have perused the evidence of doctor, who deposed that on account of injury there is a restriction of right wrist movement and he assessed the disability at 15%. The doctor was not cross examined on behalf of the Insurance Company and his evidence with regard to the disability remain unchallenged, in spite of that the lower authority has not taken the percentage of disability into consideration. When there is a restriction of right wrist movement at least by 15% the lower Authority ought to have considered the said percentage as loss of earning capacity since the claimant is a driver. Therefore, the contention of counsel for appellant has to be accepted that the lower authority committed error in not taking the percentage of disability while calculating the compensation. If the compensation with the salary taken into consideration by the lower authority and the corresponding factor applicable to the age group of claimant by applying 15% disability is calculated, it comes to Rs.58,736/- ($\text{Rs.3353} \times \frac{60}{100} \times 194.64 \times 15\%$). Therefore, claimant is entitled for Rs.58,736/- instead of Rs.39,237/- and he is entitled for difference amount and the Insurance Company shall deposit the difference

amount within 30 days from the date of order with the same rate of interest as awarded by the lower Authority.

11. Accordingly, the appeal is partly allowed. No costs.

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

S. RAVI KUMAR, J

25th February 2015.
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