

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1722 of 2004

JUDGMENT:

This appeal is against order dated 07.04.2004 in W.C.No.137 of 2002 on the file of the Commissioner for Workmen Compensation and Assistant Commissioner of Labour-I, Guntur, where under, he granted Rs.64,372/- as compensation as against the claim of Rs.3,00,000/-.

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

Appellant-claimant contended that he worked as driver on mini lorry bearing No.AP 7 U 5875 under 1st respondent herein and the vehicle is insured with 2nd respondent herein and while he was on duty, he sustained injuries on 16.02.2002 when the mini lorry turned turtle near Dechavaramkuntla within the limits of Nekarikallu Police Station. He contended that he was getting salary of Rs.3,000/- per month besides batta and that he is entitled for a 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-I, Guntur, during enquiry examined two witnesses and marked eight documents on behalf of claimant and no witness is examined and no documents are marked on behalf of

Insurance Company and on a overall consideration of oral and documentary evidence, lower Authority fixed compensation at Rs.64,372/- by taking the wages of claimant at Rs.2,434/- and percentage of disability at 20%. Aggrieved by the quantum, claimant preferred the present appeal.

5. Heard both sides.

6. Advocate for appellant submitted that the lower authority was not right in taking the disability at 20% and it should have been taken as 100%, because the claimant lost his earning capacity completely on account of injuries sustained and thereby the lower authority committed error. He further submitted that when claimant deposed that he was earning Rs.3,000/- per month as salary, which is not contradicted by the other side, taking minimum wages as salary of claimant by the lower authority is not correct and on these two grounds the order of the lower authority was to be set aside.

7. On the other hand advocate for Insurance Company supported the order of the lower authority and contended that lower authority rightly took the percentage of disability as percentage of loss of earning capacity and there are no grounds to interfere with the findings of the lower authority.

8. Now the point that would arise for my consideration in this appeal is:

Whether the order in W.C.No.137 of 2002, of

the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, is legal, proper and correct?

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POINT :

9. There is no dispute with regard to the relationship of employee and employer between appellant-claimant and 1st respondent herein. It is also not in dispute that 2nd respondent herein issued a policy and the same is in force as on the date of accident. The Medical Officer, who treated the injured, is examined as AW.2, who is professor and head of the department of KMC, Medical College, Guntur. He deposed that the disability sustained by appellant is 20%. He further deposed that there is only mild limitations for movement of elbow and shoulder and deformity is 20% disability and that it may cause difficulty to work as a driver. The Medical Officer has not stated anywhere that this injury completely restricted claimant from doing his job as driver and that his evidence is, it would cause some difficulty to work as driver and that difficulty was assessed at 20%, so that was taken as percentage of loss of earning capacity while calculating the compensation, therefore, objection of appellant that the lower authority should have taken loss of earning capacity as 100% cannot be sustained.

10. Next objection of claimant is that the lower Authority committed error in not taking the wages of claimant as

pleaded and proved. According to claimant, he was drawing Rs.3,000/- 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.3,000/- per month, there was no denial of that fact during course of cross-examination of AW.1 on behalf of Insurance Company, therefore, the lower Authority ought to have taken salary of claimant at Rs.3,000/- 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 that 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, which was Rs.2,434/- including VDA, therefore, the objection of claimant with regard to salary cannot be sustained.

11. On a scrutiny of the entire evidence and other

materials, I am of the view that the lower Authority has not committed any error and rightly calculated the compensation by taking 20% as loss of earning capacity and the multiplier applicable to the age group of 23 years and that there are no grounds to interfere with the findings of the lower authority.

12. For these reasons, the appeal is dismissed. No costs.

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

S. RAVI KUMAR, J

25th February 2015.
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