

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3035 of 2004

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JUDGMENT:

This appeal is preferred against the order dated 05.07.2004 in W.C.No.25 of 2004 on the file of the Commissioner for Workman's Compensation and the Assistant Commissioner of Labour, Hyderabad-II whereunder he granted Rs.73,963/- as against the claim of Rs.4,00,000/.

Brief facts leading to this appeal are as follows:

The appellant submitted application before the Commissioner for Workman Compensation contending that he was employed by first respondent herein as a labourer on his tractor-trolley bearing No.AP 22 T 4519 and on 14/15.02.2003 he sustained injuries when the vehicle turned turtle due to rash and negligent driving of the driver, which resulted grievous injuries to his left leg, right leg foot and loss of skin at Raw area of both foot besides multiple injuries all over body. He contended that he was shifted to Government Civil hospital, Kalwakurthy, Mahaboobnagar District, where he was treated as inpatient for a period of one week and from there he was shifted to SVS hospital, Mahaboobnagar and he spent more than Rs.25,000/- for treatment and from there he was shifted to Osmania General hospital, Hyderabad where he was treated as inpatient. He contended that due to injuries, he is not in a position to walk and he was earning Rs.2,500/- per month as salary, Rs.10/- as daily batta and on account of injuries he lost the said income and that he is entitled for compensation of Rs.4,00,000/-.

Insurance company opposed the claim of the appellant and the lower Authority conducted enquiry during which two witnesses are examined on behalf of the appellant and 12 documents are marked, whereas one witness is examined on behalf of insurance company and two documents are marked.

On a over all consideration of oral and documentary evidence, lower authority granted Rs.73,963/- by taking the wages of appellant at Rs.2057/- per month as per

the Minimum Wages Act and loss of earning capacity at 30%. Now, aggrieved by the quantum fixed by the lower authority, appellant preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that lower authority erred in fixing loss of earning capacity at 30% though the evidence on record would disclose that there was skin loss on raw area on account of which the appellant cannot walk, cannot stand and on account of which he cannot do any labour work. It is submitted that lower authority has taken into consideration the percentage of disability as loss of earning capacity and the same is incorrect and the compensation granted by the lower authority has to be modified by taking the loss of earning capacity atleast by 80%. It is further submitted that the lower authority has not granted any interest. It is further submitted that the lower authority has not considered the medical bills, which are marked as Ex.A.12. For these reasons, the compensation fixed by the lower authority has to be modified.

Respondent inspite of service of notice neither appeared in person nor through any advocate.

Now the point that would arise for my consideration is:

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

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POINT:

There is no dispute with regard to relationship of employee and employer between appellant and first respondent herein there is also no dispute that the appellant sustained injuries while on duty on the intervening night of 14/15.02.2003 while working as labourer on vehicle bearing No.AP 2 T 4519. The main grievance of the appellant is that the lower authority failed to consider the evidence of Medical Officer in fixing the loss of earning capacity.

I have perused the material papers including evidence of Medical Officer examined as PW.2. He deposed in his evidence that the appellant sustained compound injuries like bone exposure with loss of skin on his heels. It is stated that he assessed the disability at 30% by taking scale of 15% per each heel. The Medical Officer has not stated anything with regard to loss of earning capacity of the appellant. As seen from the cross-examination of this witness he has not treated the applicant and he only assessed the disability basing on the past record i.e., the medical record of the SVS hospital, Mahaboob Nagar and Osmania General Hospital, Hyderabad. He admitted in his cross-examination that he has not certified the loss of earning capacity. The lower authority by considering the evidence of Medical Officer and also the percentage of disability assessed by the Medical Officer fixed loss of earning capacity also at the same percentage. Now the objection of the appellant is that the percentage of disability is different from percentage of loss of earning capacity and since the loss of skin at raw area made the appellant disabled to do any labour work the loss of earning capacity has to be taken as 100% and if not at least at 80%.

The appellant is examined as PW.1. Even in the chief affidavit he deposed with regard to loss of earning capacity that he is unable to work, stand and sit on his foot and due to injuries he lost earning capacity. But his evidence is not supported and corroborated by any other material and he being claimant and interested witness the lower authority has not accepted his version, as it was not corroborated by any other evidence either oral or documentary. I do not find any wrong appreciation of material by the lower authority in fixing the loss of earning capacity and there is no positive evidence to show that on account of his injury the appellant is completely disabled from doing any work muchless the work he was doing prior to the accident. In the absence of any such evidence, the contention that lower authority erred in not taking loss of earning capacity at 100% cannot be accepted.

The other objection of the appellant is that the lower authority has not considered the medical bills which are marked as Ex.A.12. As seen from the record, except marking the medical bills no material is produced to prove them as required under law. Mere

marking of document is not sufficient to consider them and if the money is claimed on the basis of medical bills, the appellant is expected to produce corresponding prescriptions or at least to examine the concerned doctor, who prescribed the medicines or the person who collected the charges for diagnosis and operation. Therefore, without any such proof the contention with regard to medical bills cannot be sustained.

Next contention of the appellant is that the lower authority has not granted any interest. Hon'ble Supreme court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS** held that interest has to be granted from the date of accident till the date of deposit. So, as per above ruling, applicant is entitled for interest at 12% per annum from the date of accident till the date of deposit on the compensation arrived by the Assistant Commissioner of Labour.

Considering the above decision, the appellant is entitled for interest. For these reasons, appeal is partly allowed granting interest at 12% per annum from the date of accident till the date of deposit on the awarded amount. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 15-04-2015.

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