

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1050 of 2008

Date:22.07.2016

Between:

M. Narsimha Reddy

... Appellant.

AND

Sri K.V. Raidu and another.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1050 of 2008

JUDGMENT:

This appeal is preferred against order dated 23-06-2003 in W.C.No.22/2002 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Patancheru, Medak.

2. Appellant herein submitted application under Section 22 of Workmen Compensation Act to the Commissioner for Workmen Compensation contending that he was working as driver on Quails Vehicle bearing No.AP 9W 8623 belonging to first respondent herein and that on 11-06-2002, during course of employment, a lorry bearing No.AP 28T 4682 came in opposite direction and dashed the vehicle near Fathenagar Fly Over Bridge, as a result, he received grievous

injuries and that one of his leg fractured. He contended that he was getting Rs.3,000/- per month as salary and on account of the injury, he is not able to do any work and claimed compensation of Rs.1,50,000/-. Insurance Company resisted the claim of the appellant contended that claimant should strictly prove that he was the driver of the vehicle bearing No. AP 9W 8623 belonging to first respondent herein. They further contended that claimant should also prove that he was getting Rs.3,000/- per month as salary from the first respondent herein. They further contended that claimant is not entitled for any compensation. On these contentions, lower authority conducted enquiry during which two witnesses were examined and five documents were marked on behalf of the claimant and no witness was examined but policy was marked as Ex.B1 on behalf of the Insurance Company and on a over all consideration of oral and documentary evidence, lower authority granted Rs.1,08,913/- as compensation and having not satisfied with the quantum, appellant preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that lower authority failed to consider the evidence of A.W.2 to decide the loss of earning capacity. He submitted as per evidence of P.W.2, appellant sustained 100% loss of earning capacity but the Tribunal has taken loss of earning capacity at 30%, therefore, order of the lower authority is to be modified and compensation has to be calculated by taking loss of earning capacity at 100%. On the other hand, Advocate for Insurance Company submitted that the document produced on behalf of appellant particularly medico legal certificate issued by BBR Hospital would only show that appellant received simple injuries and that he left that hospital against medical advise and the certificate produced by the applicant from a private hospital is contrary to

Medico Legal Certificate, therefore lower Tribunal rightly discarded the claim of appellant for 100% loss of earning capacity and that there are no grounds to interfere with the order of the Commissioner for Workmen Compensation, Medak.

5. Now the point that would arise for my consideration in this appeal is whether order of the Court below is legal, proper and correct?

6. **Point:-**It is the specific case of the appellant that he was working as driver on vehicle bearing No.AP 9W 8623 belonging to first respondent herein. From evidence of P.W.1 and documents Exs.A1, A2 & A3, it is clear that relationship of employee and employer was established and that evidence was not rebutted by the Insurance Company. From the evidence of A.W.1, it is clear that appellant met with an accident on 11-6-2002 at about 6:50 A.M., and sustained injuries in the said accident. From Ex.B1 policy, it is clear that there is a valid policy in force as on the date of accident. Now the only dispute is with regard to quantum. According to appellant, he is entitled for 100% loss of earning capacity and the lower authority has not considered evidence of A.W.2 for that purpose. It is clear from evidence of A.W.1 and Ex.A4 issued by BBR Multi Specialty Hospital that the appellant received only simple injuries and that he left the said hospital against medical advice. It is clear from his evidence that he approached A.W.2 who is a private doctor and obtained Ex.A5 certificate showing that he sustained 50% physical disability. No supporting documents like x-ray etc., are filed to show that the appellant sustained 50% physical disability so also it is not in the evidence of A.W.2 that appellant is unfit to perform duties as driver on account of injury recorded in Ex.A5. Considering these aspects the lower authority fixed the loss of earning capacity at 30% and I do not find any wrong in the approach of the lower authority. When the

document issued by BBR Multi Specialty Hospital disclose that appellant received only simple injuries, burden is heavy on the appellant to show and prove the injury that was recorded in Ex.A5. Admittedly, certificate under Ex.A4 was immediately after the accident and the certificate issued by A.W.2 which was marked as Ex.A5 was long subsequent to Ex.A4 certificate. So the lower authority rightly not accepted the claim for 100% loss of earning capacity though the appellant sustained simple injury, it took a lenient view and fixed loss of earning capacity at 30%, therefore, I do not find any grounds to interfere with the order of the lower authority.

7. For these reasons, I am of the view that the lower authority rightly fixed the loss of earning capacity and the appeal is devoid of merits and liable to be dismissed.

8. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellanies petitions, if any, pending in this appeal shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:22.07.2016

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