THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.4874 of 2004

Date:05.02.2016

Between:

National Insurance Co., Ltd.,
Rep by its Divisional manager,
Eluru, W.G. District.

... Appellant.

AND

Sri Bandaru Venkata Subba Rao.

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.4874 of 2004

JUDGMENT:

This appeal is preferred challenging orders dated 22-09-2004 in W.C.No.21/2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

2. First respondent herein filed application before Commissioner for Workmen's Compensation contending that he was driver on lorry

bearing No.AP-27-U-3535 belonging to second respondent herein on a monthly salary of Rs.5,000/- and that on 15-11-2003, while he was coming from Ravulapalem and proceeding towards Tanuku on the said vehicle. During course of his employment, a lorry bearing No.AP-16-TT-4203 came at high speed and dashed his vehicle as a result, he sustained grievous injuries like fracture of right femur bone, right hip, right knee, left side head injury and right forehead injury.
He contended that on account of the accident, he lost his livelihood as driver and that he is entitled for compensation of Rs.3,00,000/-. This claim was resisted by the Insurance Company and on a consideration of material on record, lower authority granted Rs.3,73,071/- by taking the wages of the employee at Rs.3,700/- per month as per the minimum wages prescribed in the G.O., for a lorry driver and took the loss of earning capacity at 100%. Now aggrieved by the quantum fixed by the lower authority, Insurance Company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant-Insurance Company submitted that as per evidence produced by the claimant through Ex.A5-disability certificate, he sustained shortening of limb by 1 ½ cm and that is the only the disability for the employee, but the lower authority, while calculating the compensation instead of taking loss of earning capacity at 40%, calculated the compensation ignoring this 40% loss of earning capacity. He submitted that the award of the lower authority has to be corrected by calculating the amount at the same rate of wages by taking loss of earning capacity at 40%.

5. Advocate for respondent-claimant submitted that as per the record, as the employee is a driver and on account of shortening of

limb, he cannot eke out his livelihood as a driver and the lower authority has rightly calculated the compensation and that there are no grounds to interfere with the award of the lower authority. He further submitted that for any reason, if this Court accepts the contention of the Insurance Company and compensation is calculated by taking loss of earning capacity at 40%, the claimant may be granted interest as the lower authority has not granted any interest by following the decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED**[1].

6. Now the point that would arise for my consideration in this second appeal is whether judgments of the Courts below are legal, correct and proper?

7. **Point:-** As seen from the record, there is no dispute with regard to employee and employer relationship between the first respondent and second respondent herein. There is also no dispute with regard to the existence of valid insurance policy as on the date of the accident, which is marked as Ex.B1. As seen from the record, Ex.A5-disability certificate would only indicate the percentage of disability at 40%, but the lower authority, without looking into that aspect, calculated the compensation by taking 100% loss of earning capacity. The lower authority has not even gave a finding that employee has sustained 100% disability. On the other hand, it recorded that the petitioner can attend to other work or employer can assign light duties to him even after the accident and can get the same emoluments, which he was drawing at the time of accident. Having recorded so, the lower authority ought to have fixed the loss of earning capacity of the claimant on the basis of finding regarding

capability to work and then ought to have calculated the compensation.

As rightly pointed out by the Advocate for the appellant to that extent, the lower authority went wrong and the same has to be corrected by this Court. As per Ex.A5, the disability is 40%, therefore, taking the same as loss of earning capacity with the wages as fixed by the lower authority, the compensation has to be calculated. Lower authority took age factor at 201.66, which is also not disputed therefore, on a such calculation, the amount would come to Rs.1,49,228/- (Rs.3,700 X 201.66 X 50/100 X 40/100=). Therefore, the claimant is entitled to Rs.1,49, 228/- as compensation.

8. Learned Advocate for respondent-claimant submitted that the lower authority has not granted any interest on the compensation amount and as per the decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED** the claimant is entitled for interest at 12% per annum from the date of accident till deposit, which is not disputed by other side.

9. Considering the submission of Advocate for respondent-claimant, I am of the view that claimant is entitled for 12% on the compensation amount i.e., Rs.1,49,228/-.

10. Appeal is accordingly ordered as indicated above and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

JUSTICE S. RAVI KUMAR

Date:05.02.2016

mrb

[1] **(2014)2 SCC 298**