

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1111 OF 2004

Dated 25-1-2016

Between:

_____ K.Venkata Reddy.

_____..Appellant.

And:

_____ M.Padma and another.

_____..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1111 OF 2004

JUDGMENT:

This appeal is preferred against orders of Assistant Commissioner of Labour, who is the Commissioner for Workmen's compensation dated 12-2-2004 in W.C.No.13 of 2003.

Appellant herein preferred above claim contending that while working as driver on lorry bearing No.A.P.7T 9239 belonging to first respondent herein which was insured with second respondent, he sustained injuries in the accident occurred on 26-10-2002 while on duty while going from Guntur to Chandosi with load of Mirchi. Appellant herein claimed a sum of Rs.3,50,000/- as compensation contending that he was getting a sum of Rs.3,000/- per month as wages besides batta of Rs.20/- per day. The said claim is opposed by second respondent herein and the Commissioner for workmen compensation on a consideration of material before him awarded compensation taking loss of earning capacity at 60%. Aggrieved by the said finding, the appellant preferred the present appeal. According to appellant, he is entitled for loss of earning capacity at 100% because of the nature of injury and lower authority erred in taking loss

of earning capacity at 60% only for calculating compensation.

Learned advocate for appellant submitted that the Medical Officer who is examined as A.W.2 clearly deposed in his evidence that the permanent disability sustained by appellant herein is 60% and that appellant is not fit for his driving job and the loss of earning capacity so far as profession of the appellant is concerned it is 100%, in spite of such categorical evidence from the Medical Officer, the commissioner for Workmen's Compensation took only 60% as loss of earning capacity on the basis of percentage of disability. He further submitted that lower authority erred in taking the percentage of disability also as loss of earning capacity and that the order of the Assistant Commissioner of Labour, Guntur-1 i.e., Commissioner for workmen's Compensation has to be modified to the extent of granting loss of earning capacity at 100%.

I have perused the material papers including the order of the lower authority dated 12-2-2004 in W.C.No.13 of 2003. The appellant herein is examined as A.W.1 before the lower authority and he deposed about his claim and also about injuries he sustained in the accident during course of his employment.

As seen from the material, relationship of employee and employer between appellant and first respondent herein is not in dispute. So also, there is no dispute as to the Insurance policy issued by second respondent herein. The Medical Officer who is examined as A.W.2 deposed that appellant sustained a crush injury to his left leg and foot in the road accident on 26-10-2002 and that injured was admitted in his Nursing Home. He deposed on account of extensive injuries sustained below knee, amputation was done for the left leg. He deposed that the partial and permanent disability is 60% and that the appellant is not fit for his driving job. He also deposed that

appellant require assistance of caliper for walking and the loss of his earning capacity for his profession is 100%. He also deposed that appellant cannot sit and squat as a normal man. Though the doctor was cross-examined on behalf of second respondent herein, except putting suggestion that the percentage of disability is excessive, nothing could be elicited from him, to discard his testimony with regard to the injuries and the percentage.

As rightly pointed out by advocate for appellant, the lower authority has completely lost sight of evidence of Medical Officer, who in clear terms deposed that loss of earning capacity on account of injury is 100%. Lower authority while calculating compensation took the percentage of disability also as percentage of loss of earning capacity.

This Court in *N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another*^[1], after analyzing law on the subject from the pronouncements of Supreme Court and High Court framed the following principles to determine compensation payable under Workmen's Compensation Act. The principles culled out are as follows:-

“(a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.

(b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury;

(c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

(e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the Court where permanent partial disablement results from an injury not specified in Schedule I.

(f) The importance of medical evidence is only in case where disablement in performing duties which the workman was performing earlier cannot be decided without the aid of medical evidence. In case where it can be so decided with or without medical evidence (like amputation of limbs), medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant.

(g) Loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors taken into account.

(h) The loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability. Equating the percentage of loss of earning capacity to the percentage of permanent disability would result in the award of either too low or too high a compensation. What requires to be assessed is the effect of permanent disability on the earning capacity of the injured. This involves ascertainment of what activities the claimant can carry on in spite of permanent disability and what he could not do as a result of the permanent disability; ascertainment of his avocation, profession and nature of work before the accident and also his age; and finding out whether he is totally disabled from earning any kind of livelihood (or) whether in spite of permanent disability, he can still effectively carry on the activities and functions, which he was earlier carrying on (or) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. In para.14 of (2011) 1SCC 343 and in para.8 of (2012) 2 SCC 267 appropriate guidance is available.

(i) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Commissioner/Court with reference to the evidence in entirety.

(j) Where a claimant is a workman who suffered injuries in an accident and his employer either provides for pension after retiring the workman on the grounds of medical invalidation or the dependants of the claimant are given appointment on compassionate grounds, he has a duty to disclose these facts and they would have a material bearing on the ascertainment of the percentage of loss of earning capacity.

(k) It is a question of fact in each case whether there is permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability.

(l) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income."

From the above guidelines, it is clear that the lower authority erred in taking loss of earning capacity at 60% though the medical evidence disclose that the loss of earning capacity is 100%.

For these reasons, I am of the view that the award of the lower authority is to be modified and the compensation has to be fixed by taking the loss of earning capacity at 100%. Though the appellant contended that he is getting Rs.3,500/- per month, the lower authority took Rs.2,587/- as minimum wages and VDA at Rs.840/- and total sum of Rs.3,427/- was taken as wages of the appellant for the purpose of calculation of compensation. So far as this amount is concerned, there is no dispute. The lower authority took multiplier factor at 163.07 by taking the age

of injured as 47 years. So far as this aspect also, there is no dispute from the appellant. Therefore, now by taking loss of earning capacity at 100%, the compensation has to be calculated. If it is done so, it would come to Rs.3,35,304/- (163.07 x 3427 x 60/100), the appellant is entitled for this amount i.e., Rs.3,35,304/- + 403/- stamp duty i.e., total amount of Rs.3,35,707/-.

The appeal is accordingly allowed granting Rs.3,35,707/-as compensation. Second respondent is directed to pay the difference amount within 30 days from the date of receipt of order failing which Second respondent is liable to pay interest at 12% p.a., on the difference amount from the date of expiry of the time granted till date of deposit. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 25-1-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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