

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1104 of 2008

JUDGMENT:

This appeal is preferred questioning the order dated 25.07.2006 in W.C.No.237 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Nalgonda.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he was working as driver on Auto bearing No.AP-24-6643 under the employment of second respondent herein on a monthly salary of Rs.5,000/-. It is further contended that on 29.04.2005 at about 12.30 p.m., while claimant was driving the said Auto from Devarakonda with passengers to go to Chandampeta and when the auto reached K.M.Stone No.3/2 on the outskirts of Madamadka Village, a jeep bearing No.AP-24-V-4438 came in a rash and negligent manner in opposite direction at high speed and dashed the Auto, as a result, the claimant sustained fracture of middle 1/3rd of shaft fibula (right leg), fracture of middle 1/3rd of shaft tibia (right leg) and fracture of 4th and 5th ribs on right side of the chest, fracture and dislocation of right shoulder and other multiple injuries all over the body and that he is entitled for compensation of Rs.3,50,000/-. This claim was resisted by the insurance company and contended that claimant has to strictly prove that he was working as driver on the auto and sustained injuries during course of his employment. It is further contended that the risk was not covered by insurance policy and

insurance company is not liable to pay any compensation, therefore claim petition has to be dismissed. On these allegations, the lower authority conducted enquiry, during which, two witnesses are examined and 7 documents are marked on behalf of claimant and no witness is examined and one (1) document is marked on behalf of insurance company and on a over all consideration of oral and documentary evidence, lower authority granted Rs.1,75,382/- by taking the loss of earning capacity at 45% and wages at Rs.3,154/- per month. Aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that evidence of PW.2 disclosed that disability was only 35% but the lower authority erroneously taken loss of earning capacity at 45% and compensation has to be reduced to that extent. It is further submitted that Doctor did not clarify as to how he arrived at loss of disability and his evidence is not supported by any other documentary or oral evidence with regard to percentage of disability and lower authority is not right in accepting the percentage of disability as stated by doctor.

5. On the other hand advocate for claimants submitted that the medical officer assessed loss of earning capacity at 55% and the lower authority has taken only 45% as loss of earning capacity and objection of insurance company is not at all tenable. He further submitted that the lower authority has rightly granted compensation and that there are no grounds to interfere with the order of the lower authority.

6. Now the point that would arise for my consideration is:

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

POINT:

7. As already referred above two witnesses are examined on behalf of claimants and no witnesses are examined on behalf of insurance company. Claimant himself is examined as PW.1, who reiterated his claim and the manner in which, the accident took place, and through him Ex.A1 to Ex.A7 are marked. The medical officer, who is examined as PW.2 deposed that he examined claimant and found fracture of both bones of right leg and noticed disability of 'Post traumatic (fracture of both bones of right leg) stiffness of right knee joint', and that he assessed the disability at 35%. PW.2 was cross-examined on behalf of insurance company and it was suggested to him that percentage of disability was not in accordance with M.C.Bride Scale. He denied the suggestion and asserted that the disability certificate was issued strictly in accordance with rules.

8. There is no dispute with regard to relationship of employee and employer between first and second respondents herein so also the accident. Though insurance company disputed the percentage assessed by the medical officer, they have not produced any evidence to rebut the statement of PW.2. Mere putting suggestions is not sufficient, unless those suggestions are substantiated with material evidence and they cannot be taken into consideration. Here, medical officer PW.2 clearly deposed in his evidence that loss of earning capacity of the claimant is 55%, but the lower authority considering the submissions of insurance

company and gravity and nature of injuries reduced that loss of earning capacity from 55% to 45% and calculated the compensation only at 45%. I do not find any wrong in the approach of lower authority in taking 45% as loss of earning capacity when claimant sustained fracture of both bones of right leg besides fracture and dislocation of right shoulder, fracture of 4th and 5th ribs of right side.

9. On a scrutiny of the material, I am of the considered view that lower authority rightly fixed the compensation and there are no grounds to interfere with the quantum arrived by the lower authority.

10. For these reasons, the appeal is devoid of merits and liable to be dismissed.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 18-04-2016.
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