

.HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1386 of 2008

Dated 18-3-2016

Between:

The National Insurance Company Limited,
represented by its Regional Manager, Regional Office,
Mogul Court's Building, Basheerbagh, Hyderabad.

..Appellant.

And:

Shaik Habeeb and another.

..Respondents.

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JUDGMENT:

This appeal is filed questioning the order dated 3rd June, 2008 in W.C.No.22 of 2006 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mahabubnagar.

First respondent herein submitted application to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Mehabubnagar contending that on 12-2-1999 while he was proceeding on lorry bearing No.CAS-6263 as driver met with an accident and on account of which he sustained injuries and he was shifted to Government Hospital, Dhone and thereafter, referred to Civil Hospital at Kurnool and he was operated upon right leg, right foot and right hand and that he sustained injuries during the course of his employment and entitled for compensation of Rs.2,50,000/-.

Insurance Company resisted the claim of claimants, and contended that the petitioner has not sustained any permanent disability and that he was not having valid driving licence at the time of accident and that vehicle was

not roadworthy and that the claim is high and excessive.

On these contentions, lower authority conducted enquiry during which two witnesses are examined and 11 documents are marked on behalf of first respondent herein and no witness is examined but one document is marked on behalf of appellant and on a consideration of oral and documentary evidence, lower authority granted Rs.2,45,860/- as against the claim of Rs.2,50,000/-. Questioning the same, present appeal is preferred.

Heard arguments.

Advocate for appellant submitted that lower authority is not justified in taking loss of earning capacity at 75% more than the disability assessed by the Medical Officer. He further submitted that as per Ex.A.5, the disability sustained by first respondent was only 60% but the lower authority without any material fixed the loss of earning capacity at 75% and the compensation granted by taking 75% loss of earning capacity is not tenable.

On the other hand, advocate for claimant submitted that lower authority rightly granted compensation, which is very reasonable and that there are no grounds to interfere.

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

POINT:

There is no dispute with regard to accident that took place on 12-2-1999 in which first respondent herein sustained injuries.

As seen from the record, Medical Officer examined as A.W.2 deposed that the first respondent herein suffered fractures of pelvis, shaft and ulna.

As seen from the evidence, there is a dislocation of right hip joint and considering these injuries, the Medical Officer certified that the physical disability of the claimant is 60%. Lower authority while appreciating evidence of

claimant and that of Medical Officer opined that the loss of earning capacity would be 75% and on that basis compensation was calculated. A.W.1 in his evidence deposed that he became disabled on account of injuries and not able to attend as driver and lost his source of income. Considering that evidence with reference to injuries like fracture of pelvis, dislocation of right hip joint and fracture of shaft, lower authority has assessed loss of earning capacity at 75%.

I do not find any wrong in the approach of the lower authority in fixing loss of earning capacity. The injuries recorded by the Medical Officer definitely disable any person to work as driver and when the claimant specifically deposed in his evidence supporting his plea that he became disabled and not able to do the work of driver, the objection of Insurance Company that fixing loss of earning capacity at 75% is not at all tenable.

On a scrutiny of material on rerecord, I am of the considered view that the lower authority has rightly calculated compensation and that there are no grounds to interfere with the findings of the lower authority.

For these reasons, this Civil Miscellaneous Appeal is dismissed. 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 18-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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