HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1132 of 2008
AND
CROSS OBJECTION (S.R.) No.36678 of 2009

COMMON JUDGMENT:

This appeal is preferred questioning order dated 26.06.2006 in W.C.No.61 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda (for short, 'lower Authority').

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation contending that he was working as driver on auto bearing No.AP 24 V 5029 under the employment of 2nd respondent herein and on 10.03.2005 at about 8.30 a.m. while applicant was driving his auto from Chennaram bus stage to go to Venkatampeta Thanda and when he reached Sheripalli bus stage, he dashed to a stationed auto bearing No.AP 24 V 6118, as a result, he sustained fracture and deformity of fibula, deformity of tibia, fracture of 4th, 5th and 6th ribs on right side, fracture of right shoulder, grievous injury on left thigh and fracture of 2nd metatarsal bone on right side. He contended that he was drawing a salary of Rs.4,500/- per month and that he is entitled for a compensation of Rs.4,00,000/- with interest at 12% per annum from the date of accident

together with costs. This claim was resisted by Insurance Company and also by the owner of the vehicle. The owner-2nd respondent contended that he was paying salary of Rs.4,000/- per month to applicant, but not Rs.4,500/- and as the vehicle is insured with appellant herein, the risk is covered under the policy. Insurance Company contended that as the accident was due to the contributory negligence of applicant himself, Insurance Company is not liable to pay any compensation. On these contentions, the lower Authority conducted enquiry, during which two witnesses are examined and seven documents are marked on behalf of applicant and no witness is examined and no document is marked on behalf of Insurance Company and owner. On a overall consideration of oral and documentary evidence, the lower Authority granted compensation of Rs.1,72,350/- by taking wages of applicant at Rs.3,014/- and loss of earning capacity at 45%. Aggrieved by the said order, Insurance Company preferred the present appeal contending that the lower Authority without any evidence took the loss of earning capacity at 45% and failed to consider that the accident was only due to the contributory negligence of applicant himself. The applicant filed Cross-Objections contending that the lower Authority ought to have taken the salary at Rs.4,500/- per month in stead of Rs.3,014/- per month and it is also contended that the lower Authority is not justified in taking the loss of earning capacity at 45% though the Medical Officer assessed the loss of earning capacity more than 45%. It is further contended that the lower Authority failed to grant any interest on the compensation amount and on these grounds the order of the lower Authority has to be modified.

3. Heard both sides.

4. Both advocates submitted their arguments supporting the respective contentions of their parties.

5. Now the point that would arise for my consideration in this appeal is:

> *Whether the order dated 26.06.2006 in W.C.No.61 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda, is legal, proper and correct?*

POINT :

6. There is no dispute with regard to the accident that took place on 10.03.2005. It is clear from the evidence in the said accident applicant received several injuries including fractures to fibula, tibia, ribs and metatarsal bone. The Medical Officer, who treated and conducted operation, is examined as PW.2 and he deposed as to the injuries sustained by applicant and stated that due to the injuries there was shortening and he assessed the disability at 55%. He also deposed that with these injuries applicant cannot do his work as he did previously and that the loss of earning capacity would be around 80%. This

witness is cross-examined on behalf of Insurance Company except putting suggestions, nothing could be elicited from him to discard the testimony with regard to the percentage of disability and also loss of earning capacity. Advocate for applicant submitted though applicant contended that loss of earning capacity fixed by the lower Authority is incorrect, the applicant is now not pressing that ground and pressing the ground of interest only.

7. As seen from the record, there is clear evidence from the Medical Officer as to the loss of earning capacity and the lower Authority fixed loss of earning capacity less than the percentage assessed by the Doctor and as applicant is not now pressing the said objection, the loss of earning capacity as fixed by the lower Authority has to be accepted. The other objection of Insurance Company is that the accident was due to the contributory negligence of the injured himself. It is clear from the evidence that the injured dashed a stationed auto and there is no material on record to show that the said accident was due to the negligence of the injured himself and when Insurance Company specifically contended that there is contributory negligence on the part of applicant himself, burden is on it to substantiate the same. Admittedly, no witness is examined on behalf of Insurance Company and no document is marked, on the other hand Ex.A.1 is supporting the version of injured with regard to the cause

of accident. In the absence of any evidence on behalf of Insurance Company or the owner the testimony of PW.1, which is supported with Exs.A.1 to A.7, cannot be discarded and the lower Authority has rightly accepted the evidence of applicant. For these reasons, it is held that Insurance Company has failed in proving that the accident was due to the contributory negligence of applicant himself.

8. One of the contentions of applicant is that the lower Authority failed to grant interest on the compensation amount. As seen from the award, the lower Authority has not granted any interest on the compensation amount of Rs.1,72,350/-. In **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS**[1] Supreme Court held that interest has to be granted from the date of accident till the date of deposit. So, considering the above referred decision of Supreme Court, applicant is entitled for interest at 12% per annum from the date of accident till the date of deposit on the compensation granted by the lower Authority.

9. For these reasons, while confirming the compensation fixed by the lower Authority, the award is modified by granting interest on the compensation amount and accordingly, appeal is dismissed and cross-objection is allowed to the extent of grant of interest..

10. Miscellaneous petitions pending, if any, shall stand

closed in both the cases. No costs.

S. RAVI KUMAR, J

6th June 2016.

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[1] (2014)2 SCC 298