

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**C.M.A No.2816 of 2004**

**Date:27.01.2016**

**Between:**

Mohd. Niranjan

... Appellant.

**AND**

K. Srinivas Reddy and another.

...Respondents.

**The Court made the following :**

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**C.M.A No.2816 of 2004**

**JUDGMENT:**

This appeal is preferred challenging order dated 06-10-2003 in W.C.No.100/1997 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

2. Brief facts leading to this Civil Miscellaneous Appeal are as follows:-

Appellant herein filed a petition before Commissioner for Workmen's Compensation contending that he worked as

a Cleaner on DCM Van bearing No.AP-11T-7692 belonging to first respondent herein and that on 16-10-1996, while he was travelling on the said van from Pune to Vijayawada as a Cleaner, he sustained injuries in the accident that occurred and that he could not regain normalcy. He contended that he was drawing Rs.2,000/- per month as wages and he was 20 years at the time of accident and that he is entitled for a compensation of Rs.1,50,000/-. On these contentions, the Commissioner for Workmen's Compensation, relying on the medical evidence, granted a sum of Rs.60,560/- as compensation taking the earnings of the appellant at Rs.1,155/- as per G.O.Ms.No.71, dated 16-04-1991 and disability at 40% as assessed by the medical officer.

Now aggrieved by the grant of Rs.60,560/- as against Rs.1,50,000/-, claimant preferred the present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted that the lower authority has erred in not considering the disability of the appellant at 100% as claimant is not able to perform duties as a Cleaner on account of his injuries. He further contended that the lower authority ought to have granted interest on the compensation amount and for these two reasons, the order passed by the lower authority has to be modified.

5. On the other hand, Advocate for second respondent-Insurance Company submitted that lower authority has rightly fixed the compensation by taking the disability assessed by Dr. V. Srinivas Raj under Ex.A4 and that there are no grounds to interfere with the findings of the lower authority.

6. Now the point that would arise for my consideration in this miscellaneous appeal is whether the appellant is entitled for any enhancement if so to what amount?

7. **Point:-** The first and foremost contention of the appellant is that on account of the injuries sustained in the accident, the disability is 100% as petitioner-appellant is not able to perform his duties as a cleaner, after the accident. As seen from the material, appellant herein produced Ex.A4, the disability certificate issued by Dr. V. Srinivas Raj, M.S., Ortho, Miryalaguda, who assessed the loss of disability at 40% for mal-united fracture, shortening of lower left leg. The wound certificate, which is marked as Ex.A3, issued by Government Hospital, Nalgonda reveals that appellant suffered deformity of middle left thigh, fracture to lower 1/3<sup>rd</sup> of left leg and that these injuries are grievous in nature. The Orthopedic Surgeon certified the percentage of disability of these two injuries at 40% and now the contention of the appellant is that these injuries have to be treated as 100% disability. But As seen from the record, there is absolutely

no material to support the submission of the learned counsel for the appellant, on the other hand, the document relied on by the appellant himself would only indicate that the disability is only 40%.

The lower authority, while calculating the compensation, took this 40% and calculated. Therefore, objection of appellant in respect of percentage of disability is not at all tenable.

8. One of the arguments advanced on behalf of the appellant is that the lower authority was not in right in taking Rs.1,155/- as wages when the appellant claimed wages of Rs.2,000/- per month. As seen from the record, except the plea with regard to wages, no evidence is produced on behalf of the appellant to show that he was getting Rs.2,000/- per month as on the date of accident.

As there was no positive evidence in support of the wages pleaded by the appellant, the lower authority took the wages applicable to a Cleaner as on the date of accident as per G.O.Ms.No.71, dated 16-04-1991 and calculated the compensation. I do not find any wrong in the approach of the lower authority either in fixing the wages or in fixing the loss of earning capacity. The entire argument of the learned counsel for the appellant is without any supporting evidence.

9. The other contention of the appellant is that lower authority has not granted any interest on the compensation amount and that the appellant is entitled for interest on the

compensation amount. Advocate for appellant submitted that as per the decision of Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED**<sup>[1]</sup> claimant is entitled for 12% interest. Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH v. NATIONAL INSURANCE COMPANY LIMITED**<sup>1</sup> held interest has to be granted on the compensation at 12% from the date of accident. Hon'ble Supreme Court by relying on a earlier decision in **PRATAP NARAIN SINGH DEO v. SRINIVAS SABATA**<sup>[2]</sup> wherein a Four-Judge Bench held that compensation has to be paid from the date of accident.

So, considering the above referred decision, the claimant is entitled for interest at 12% per annum from the date of accident i.e., on 16-10-1996 till deposit and the Insurance Company shall deposit the interest part within 30 days from the date of receipt of this order.

10. For these reasons, appeal is partly allowed granting interest at 12% per annum from the date of accident i.e., from 16-10-1996 till deposit.

11. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

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**JUSTICE S. RAVI KUMAR**

**Date:27.01.2016**

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[\[1\]](#) (2014)2 SCC 298

[\[2\]](#) 1976 (1) SCC 289