

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1190 of 2004

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Date:28.01.2016

Between:

United India Insurance company
Limited, United India Building,
Basheerbagh, Hyderabad.

... Appellant.

AND

V. Damodar and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1190 of 2004

JUDGMENT:

This appeal is preferred challenging award dated
07-02-2004 in W.C.No.52/2003 on the file of Commissioner
for Workmen's Compensation and Assistant Commissioner
of Labour, Hyderabad-II.

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

First respondent herein filed application before Commissioner for Workmen's Compensation contending that he was working as Driver on Eicher Vehicle bearing No.AP-10U-7764 under second respondent and that on 07-11-2002, at about 4:00 hours, when he was proceeding with vehicle along with additional driver from Bangalore to Hyderabad and when the vehicle reached near Marur Village of Ananthapur District, the applicant lost control of the vehicle and dashed against lorry bearing No.AP-T-9922, which resulted fracture of shaft tibia, head injury and other multiple injuries and as he sustained injuries during course of his employment, he is entitled for compensation of Rs.4,00,000/-. This claim was resisted by the Insurance Company and the lower authority, on a consideration of oral and documentary evidence of both parties, awarded compensation of Rs.90,635/- by taking disability at 25%. Aggrieved by the quantum fixed by lower authority, Insurance Company preferred the present appeal.

4. Heard both sides.

5. Advocate for appellant submitted that the lower authority failed to appreciate evidence of R.W.2, who categorically deposed that the injury of the claimant has completely healed and that he can drive the vehicle and do any other job and the disability or the handicap was only during the period of treatment. He further submitted that

lower authority failed to consider this part of evidence of R.W.2 and wrongly fixed disability at 25% arbitrarily without any basis. He further submitted that the claimant has failed to rebut evidence of R.W.2 so also documents Exs.B1, B2 & B3 and that the compensation fixed by the lower authority is high and excessive. He further submitted that the lower authority failed to see that there is no loss of earning capacity and committed serious error in awarding a high compensation of Rs.90,535/-.

6. On the other hand, Advocate for claimant submitted that the lower authority has assessed evidence of both the Doctors i.e., P.W.2 & R.W.2 and basing on their evidence, fixed the disability at 25% though the Medical Officer examined on behalf of claimant as assessed the disability at 35%. He submitted that lower authority has rightly fixed the compensation and that there are no grounds to interfere.

7. Now the point that would arise for my consideration in this civil miscellaneous appeal is whether there are any grounds to interfere with the Award dated 07-02-2004?

8. **Point:-** There is no dispute with regard to relationship of employee and employer between R1 & R2. There is also no dispute with regard to coverage of insurance as on the date of accident. As seen from the record, claimant is examined as P.W.1 and the Medical Officer, who treated the claimant was examined as P.W.2. In his evidence, P.W.2 deposed

that he issued disability certificate on examination of the injured, who was treated at Anathapur Government Hospital for fracture of shaft of right tibia. He deposed that he advised the claimant to take symptomatic treatment and on examination of X-rays and other material, he estimated the disability at 35%, which is partial and permanent and that the injuries sustained by the claimant were grievous in nature. On behalf of the Insurance Company, R.W.2 was examined and he deposed that he has not seen the claimant and he is only deposing on the basis of documents that are placed before him. He denied suggestion that applicant sustained 30% disability. So as rightly pointed out evidence of R.W.2 is only on the basis of X-rays and other documents whereas, the evidence of P.W.2 is on the basis of treatment given to the claimant and also on physical examination.

The lower authority, by comparing the evidence of these two witnesses, fixed the disability at 25% though P.W.2 assessed the disability at 35%. As seen from the record, the medical record produced by the applicant do show that he sustained grievous injuries and there was some disability on account of the injury sustained by him in the accident. The main contention of the Advocate for Insurance Company is that lower authority ought to have accepted the evidence of R.W.2, who stated that applicant can drive a vehicle or do any other job, but the contention of the learned counsel cannot be accepted because the evidence of R.W.2 is based only on old record and he has not physically

examined the patient whereas P.W.2 gave treatment to the patient and also on physical examination only assessed the disability. On a over all consideration of the material on record, I am of the considered view that the lower authority has rightly assessed the disability and that there are no grounds to interfere with the Award dated 07-02-2004.

9. For these reasons, appeal is dismissed as devoid of merits. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:28.01.2016

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