

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.2457 of 2004

JUDGMENT:

This appeal is preferred questioning order dated 26.05.2003 in W.C.No.144 of 2002 on the file of Assistant Commissioner of Labour, Nizamabad, who was Commissioner for Workmen's Compensation. The appellant herein is the claimant before the lower authority and he submitted an application under Section 22 of Workmen's Compensation Act 1923, claiming a sum of Rs.3,00,000/- as compensation contending that while he was under the employment of 1st respondent herein, on 02.07.1997 while he was proceeding in a Jeep bearing No.MH-26-C-881 from Nirmal to Bhainsa, a she-buffalo suddenly crossed the road, due to that he lost control of the vehicle, which resulted turtle of the jeep and that he sustained fracture injuries to his right tibia and immediately he was shifted to hospital, where he was treated as in-patient from 02.07.1997 to 25.07.1997 and thereafter, he took treatment under private Doctors and incurred Rs.80,000/- towards medical expenses and extra-nourishment. The lower authority conducted enquiry and on a consideration of oral and documentary evidence, granted Rs.96,797/- as compensation taking loss of earning capacity at 40%. Aggrieved by the quantum fixed by the lower authority, claimant preferred the present appeal.

2. Heard the arguments.

3. Advocate for the appellant submitted that the appellant received fracture injury to right tibia and other multiple injuries and the Medical Officer assessed the loss of earning capacity at 60% and disability at 50%. But, the lower authority arbitrarily fixed 40% as loss of earning capacity and that the compensation granted by the lower authority has to be modified. He further submitted that P.W.2 deposed in his

evidence that loss of earning capacity of the claimant is 60% and at least the lower authority ought to have taken 60% while calculating the compensation and the order of the lower authority is incorrect to that extent.

4. On the other hand, learned counsel appearing for the Insurance Company submitted that P.W.2 is a stock witness and he is in the habit of issuing certificates without properly assessing the disability and this Court in two cases held that the certificate issued by him cannot be taken into consideration. He further submitted that even in this case, from his own admission, P.W.2 has not physically assessed the disability by conducting any test, he only issued disability certificate basing on old records of the claimant. He further submitted that there is no material for the percentage determined by P.W.2 to take the same into consideration for calculating compensation and that claimant has miserably failed to show that loss of earning capacity was more than 40%. He further submitted that Medical Officer has deposed in his evidence that he has not conducted any clinical or physical examination of the claimant while issuing disability certificate. He submitted that there are no grounds to interfere with the order of lower authority.

5. Now the point for consideration in this appeal is whether there are any grounds to interfere with the award of the lower authority?

6. **POINT:**

There is no dispute with regard to the relationship of employee and employer so also about policy issued by the second respondent. The main dispute is with regard to quantum of compensation and its calculation. According to appellant, lower authority ought to have taken loss of earning capacity at 60% as assessed by the Medical Officer-P.W.2. On the other hand, it is the contention of Insurance Company that there is no basis for P.W.2 to fix the loss of earning capacity at 60%. Now, it may be relevant to examine the evidence of

P.W.2 to appreciate the contentions and rival contentions of both parties. As rightly pointed out by learned counsel for the Insurance Company, P.W.2 in his evidence deposed that he verified the old records of the claimant for assessing the disability and the loss of earning capacity. He clearly admitted in his evidence that he has not conducted any clinical or physical examination of claimant, but he issued the disability certificate-Ex.A.9 on the basis of old records relating to claimant (P.W.1). According to Medical Officer, he found fracture of right tibia and that claimant has restricted movements of right knee and ankle joint. Referring to this aspect, learned counsel for the insurance company submitted that as per the material on record, the claimant immediately after the accident ran away from the spot and if really there were such serious injuries, it is not possible for the claimant to run away from the spot. As seen from the First Information Report, which is marked as Ex.A.1, there is a clear averment showing that jeep driver had run away from the spot immediately after the accident. From the First Information Report, it is clear that the claimant was in a position to run away from the spot; therefore, burden is heavy on claimant to show and prove the injuries as spoken to by P.W.2. Further, as seen from the wound certificate, the Medical Officer, Nirmal, who examined the injured on 02.07.1997 found abrasion at ankle joint region and bruise near left ankle region. He has not recorded any fracture in this certificate. Considering these aspects, I am of the view that there is no basis for the Medical Officer-P.W.2 to assess the loss of earning capacity at 60% and it is only an imagination, which cannot be relied on for the purpose of calculating compensation.

7. Further, this Court earlier held in **Divisional Manager, New India Assurance Company Limited, Nizamabad V. Gaddamidi Papaiah and another**^[1] and **New India Assurance Company Ltd. V. Sinda Rama Krishna and another**^[2] that P.W.2 herein is in the

habit of issuing certificates only to help the claimants. In view of such a finding against P.W.2, certificates issued by him have to be scrutinized with great care and caution. Unless the disability assessed by the Medical Officer is supported and corroborated with other material evidence, the same cannot be relied on.

8. For these reasons, I am of the view that there are no grounds to interfere with the loss of earning capacity as fixed by the lower authority in calculating the compensation. Hence, the Appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the appeal is dismissed, but in the circumstances without costs.

10. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

S. RAVI KUMAR, J

JANUARY 28, 2016
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THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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Date:28.01.2016

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[\[1\]](#) 2013 Law Suit (Hyd) 592

[2] 2004 (6) ALT 385