

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.3403 of 2003

JUDGMENT:

This appeal is preferred questioning Award dated 11.07.2003 in W.C.No.73 of 2001 on the file of Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nizamabad, where under, Rs.1,17,131/- is granted as against the claim of Rs.2,00,000/-.

2. Brief facts leading to this appeal are as follows:

Appellant herein submitted application under Section 22 of the Workmen's Compensation Act to the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nizamabad claiming a sum of Rs.2,00,000/- as compensation for the injury sustained by her during the course of her employment. Appellant contended that she was working as Labourer on lorry bearing No.AP 25T 4186 and while discharging her duties as labourer on 02.05.1999 as the lorry was involved in a road accident, she sustained fracture and other multiple injuries and that respondents are liable to pay the compensation as claimed.

3. Insurance company resisted the claim of appellant and the lower authority conducted enquiry and on the basis of evidence placed before it granted compensation of Rs.1,17,131/- by taking monthly wages of appellant as Rs.1800/- per month and loss of earning capacity at 50%. Now aggrieved by the quantum, present appeal is preferred.

4. Heard arguments.

5. Advocate for appellant submitted that on account of

injuries, appellant sustained total disability and the lower authority took only 50% as loss of earning capacity instead of taking 100% loss of earning capacity and the compensation has to be calculated by taking loss of earning capacity at 100%. He further submitted that the lower authority has not granted any interest on the compensation and that the claimant is entitled for interest.

6. On the other hand, advocate for insurance company submitted that by considering the evidence of medical officer and the nature of injuries, lower authority rightly assessed the loss of earning capacity at 50%, which was the functional disability as per the injuries recorded in the disability certificate. He submitted that lower authority rightly fixed the compensation and that there are no grounds to interfere with the same. He further submitted with regard to interest that he would leave the matter to the discretion of the court.

7. Now the point that would arise for my consideration is:

Whether the Award of Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nizamabad is legal, proper and correct?

POINT:

8. There is no dispute with regard to relationship of employer and employee between appellant and first respondent herein. There is also no dispute about existence of valid insurance policy as on the date of accident. As seen from the material, appellant sustained injuries on 02.05.1999, while she was travelling as labourer on lorry bearing No AP 25T 4156 belonging to first respondent herein. Appellant was 25 years old as on the date of accident and the injuries sustained by her are fracture to her left leg besides multiple injuries on both hands, chest and

head. Considering the nature of fracture, the lower authority fixed the loss of earning capacity at 50%.

9. Now the contention of advocate for appellant is that medical officer, who is examined as PW.2 deposed in his evidence that functional disability of the fracture is 75%, therefore the lower authority ought to have taken the loss of earning capacity at 75%. But as seen from the material, there is no documentary proof to support the version of medical officer, whereas the disability certificate would only indicate the partial and permanent disability at 50%, therefore the lower authority has rightly calculated the compensation by taking loss of earning capacity at 50%, and I do not find any wrong in the approach of lower authority.

10. Now coming to the other contention of appellant is that lower authority has not granted any interest on the compensation. Hon'ble Supreme court in **SABERABIBI YAKUBBHAI SHAIKH AND OTHERS Versus NATIONAL INSURANCE COMPANY LIMITED AND OTHERS**^[1] 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 Assistant Commissioner of Labour.

11. For these reasons, this Civil Miscellaneous Appeal is partly allowed granting interest on compensation amount at 12% p.a. from the date of accident till date of payment while confirming the compensation fixed by Lower Authority. Insurance Company is granted six (06) weeks time to deposit the interest amount.

Miscellaneous Petitions, if any pending, in this Appeal,

shall stand closed.

S. RAVI KUMAR, J

Date: 10-02-2016.
gvl

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