

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3345 of 2003

-
Date:09.02.2016

Between:

Girrajai Narwade

... Appellant.

AND

K. Venkateshwar and another.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.3345 of 2003

-
JUDGMENT:

This appeal is preferred questioning award dated 12-06-2003 in W.C.No.198/2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad.

2. Appellant herein submitted application under Section 22 of the Workmen's Compensation Act claiming a sum of Rs.4,00,000/- with interest at 24% per annum for the injuries sustained by him during course of his employment.

He contended that he was laborouer on lorry bearing No.ATK- 9477 belonging to first respondent herein and on 12-12-2001, during course of his employment, the lorry in which he was traveling, dashed against a motor cycle bearing No.AP-25-F-8208 due to rash and negligent driving of the driver, which resulted multiple injuries all over

the body. This claim was resisted by the Insurance Company. On a consideration of oral and documentary evidence, lower authority granted Rs.79,561/- as against the claim of Rs.4,00,000/-. The lower authority has taken loss of earning capacity at 40% and monthly wage of the claimant at Rs.1,800/- and age factor at 184.17. Aggrieved by the quantum, claimant preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant mainly contended that medical evidence do show that the loss of earning capacity is 55%, but the lower authority arbitrarily fixed loss of earning capacity at 40% and the same is erroneous. He further submitted that lower authority has taken only Rs.1,800/- per month as wages of the claimant and the same is very low. He also submitted that though claimant claimed interest on the compensation amount, the lower authority has not granted any interest and for these reasons, the award of the lower authority has to be modified and the compensation as claimed is to be granted.

5. On the other hand Advocate for second respondent-Insurance Company submitted that as there is no evidence before the lower authority with regard to wages, an amount of Rs.1,800/- per month is rightly taken by lower authority for the purpose of calculating compensation. He further submitted that there are no grounds to interfere with the findings of the lower authority and the award passed thereon.

6. Now the point that would arise for my consideration in this appeal is whether judgment of Court below is legal, correct and proper?

7. **Point:-** There is no dispute with regard to relationship of employee and employer between the appellant and first respondent. On 12-12-2001, appellant while travelling from Armur to Nizamabad, during course of his employment on lorry bearing ATK-9477, sustained injuries. Medical Officer deposed that he examined the claimant and found mal-united fracture, right lower end of radius and right clavicle.

He deposed that the disability sustained by appellant was 50%, which is permanent and partial in nature. He also deposed that functional disability of the injury is 55% and the loss of earning capacity is also 55%. He deposed that at the time of assessing the disability, he also verified the previous medical records of the injured including Ex.A3-injury certificate and Ex.A4-original disability certificate. There is no rebuttal evidence on behalf of the Insurance Company disputing the assessment of permanent disability and loss of earning capacity assessed by P.W.2.

The lower authority has observed that in view of the suggestion put to P.W.2 that the percentage is exaggerated, he opined that by taking loss of earning capacity at 40%, ends of justice would be met. As rightly pointed out by Advocate for appellant, there is no basis for the lower authority to arrive at 40% loss of earning capacity. He has fixed it arbitrarily without any material. When the medical officer on physical examination of the patient, assessed the loss of earning capacity at 55%, to discard it there must be convincing evidence. Admittedly the respondents have not adduced any evidence to rebut the evidence of medical officer. Mere putting suggestions is not sufficient. Unless those suggestions are substantiated with material evidence, they cannot be relied on, but the lower authority, only by relying on suggestions, has reduced the percentage of loss of earning capacity assessed by the medical officer unilaterally. Therefore, I am of the view that the lower authority is not right in reducing the loss

of earning capacity and the loss of earning capacity assessed by the medical officer has to be taken into consideration.

8. The other objection of the Advocate for the appellant is that the lower authority has taken Rs.1,800/- only as monthly wages instead of taking the wages as claimed by the appellant.

9. As seen from the material, appellant has not produced any evidence to show the wages received by him from his employer. Advocate for the appellant submitted that the salary certificate was produced and marked as Ex.A5, but the lower authority has not considered the same. For a labourer, there cannot be any salary certificate, further unless that certificate is duly proved by examining the person who issued it, relevance cannot be placed on such document for the purpose of calculating the compensation, therefore, the objection of the appellant with regard to monthly wages is not at all tenable.

10. The next contention of the learned Advocate for appellant - claimant that the lower authority has not granted any interest on the compensation amount in spite of claim made by the appellant and as per the decision of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED** the claimant is entitled for interest at 12% per annum from the date of accident till deposit. So, considering the above referred decision, the claimant is entitled for interest at 12% per annum from the date of accident i.e., on 12-12-2001 till deposit.

11. Now if the compensation is calculated on the basis of 55%, loss of earning capacity it would come to Rs.1,09,397/- ($\text{Rs.1,800/-} \times \frac{60}{100} \times 184.17 \times \frac{55}{100}$). Therefore, the appellant is entitled for this amount of Rs.1,09,397/- with interest at 12% per annum from the date of accident till deposit. The second respondent-Insurance

Company is granted two months time to deposit the amount from the date of receipt of this order.

12. Appeal is accordingly ordered as indicated above and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

JUSTICE S. RAVI KUMAR

Date:09.02.2016

mrh