

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.230 OF 2006

Dated 1-3-2016

Between:

Vangala Krishna Rao.

..Appellant.

And:

Palli Aseervadam and another.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.230 OF 2006

JUDGMENT:

This appeal is preferred questioning the order dated 27-12-2005 in W.C.No.38 of 2003 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour Circle-1, Guntur.

Appellant herein submitted application to the Commissioner for Workmen Compensation, Guntur contending that he worked as driver on lorry bearing No.ATS 324 belonging to first respondent herein and on 12-5-2003, while coming from Hyderabad and proceeding to Guntur, due to collision of lorry with opposite vehicle near Hayathnagar in Ranga Reddy District, he sustained injury and as the same was during course of his employment, he is entitled for a compensation of Rs.4,00,000/-.

First respondent herein filed counter admitting the employment, accident and injuries contending that there is a Insurance Policy and the second respondent herein has to pay the amount.

Insurance Company filed counter disputing the averments of the petition, contending that the claim is high and excessive and that the claimant has to prove employee and employer relationship and also got driving

license. On these contentions, lower authority conducted enquiry, during which two witnesses are examined and 11 documents are marked on behalf of appellant and no witness is examined and no document is marked on behalf of Insurance Company. On an overall consideration of oral and documentary evidence, lower authority granted compensation of Rs.1,32,524/- by taking loss of earning capacity of applicant at 35%. Now aggrieved by the quantum, injured preferred this appeal.

Heard arguments.

Advocate for appellant submitted that lower authority has failed to appreciate evidence of A.W.1. who has categorically stated that since the date of accident, he is not able to do any work. He further submitted that the Medical Officer who is examined as A.W.2 deposed that workman is not fit to do his duty as driver but the lower authority failed to consider this aspect and arbitrarily fixed loss of earning capacity at 35%. He further submitted that when the applicant sustained injury during the course of his employment on account of which, he became unfit to do job of driver, lower authority ought to have taken earning capacity at 100% in stead of 35%, therefore, award passed by the lower authority is not in conformity with the provisions of W.C.Act and the same has to be modified.

On the other hand, advocate for Insurance Company submitted that lower authority has rightly fixed the loss of earning capacity at 35% and that there are no grounds to interfere with the quantum fixed by the lower authority. He further submitted that even if the contention of the appellant that he may not be fit for driver job is accepted, but he can do other works and therefore, loss of earning capacity cannot be taken as 100%.

Now the point that would arise for my consideration in this appeal is whether the order of the Commissioner is proper, legal and correct?

POINT:

Appellant received injuries during course of his employment while working as driver on lorry bearing No.ATS 324 on 12-5-2003. Commissioner for Workmen's Compensation granted compensation to the appellant by taking loss of earning capacity at 35% whereas it is the contention of the appellant that loss of earning capacity has to be taken at 100%. That is the main point involved in this appeal.

The Medical Officer is examined as A.W.2 who deposed that the appellant was admitted in Government Hospital, Guntur on 16-5-2003 with fracture Patella right side and that patient was referred to Osmania General Hospital, Hyderabad. He further deposed that the patient was operated on 23-5-2003 and was discharged on 2-6-2003 and the physical disability is 35%. He also deposed that restriction of movement quadriceps muscle restricted up to 60 degrees of right knee joint and he deposed that patient cannot attend normal duties of a driver. In the cross-examination, only the clarification given is that there cannot be any difficulty for the patient to walk and in attending his personal work but he assertively stated that he cannot attend duties of a driver because of restriction of knee reflection.

According to advocate for appellant as the Medical Officer has deposed that the appellant cannot attend to the duties of driver, the loss of earning capacity is to be taken as 100%.

Learned advocate for Insurance Company contended that lower authority has rightly fixed loss of earning capacity of 35% because appellant can attend some other work.

Learned Advocate for appellant mainly relied on following rulings.

In *NATIONAL INSURANCE CO.LTD., v. BALJIT KAUR AND OTHERS* (^[1]), the point involved was in

respect of meaning of word 'any person' with reference to Section 147 of the Motor Vehicles Act.

Here in our case, no such point is involved in respect of the meaning of 'any person'.

In *ORIENTAL INSURANCE COMPANY LIMITED v. SIBY GEORGE AND OTHERS* (^[2]) *SABERABIBI YAKUBBHAI SHAIKH AND OTHERS v. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS* (^[3]), point involved in these two decisions, is in respect of payment of interest and relevant date from which interest is payable.

In *RITA DEVI AND OTHERS v. NEW INDIA ASSURANCE CO. LTD., AND ANOTHER* (^[4]), the point involved therein is as to the maintainability of appeal by Insurance company without obtaining leave under Section 170 of Motor Vehicles Act. That decision is no way concerned with the issue involved in this case.

With regard to disability and loss of earning capacity, advocate for Insurance Company referred to the rulings in *SIDDABATTULA SIVANNARAYANA v. CHUKKAPALLI SAMBASIVA RAO AND ANOTHER* (^[5]), *RAMPRASAD BALMIKI v. ANIL KUMAR JAIN AND OTHERS* (^[6]), *AND CHARAN SINGH v. G.VITTAL REDDY AND ANOTHER* (^[7]).

Learned counsel for appellant referred to the following rulings.

PRATAP NARAIN SINGH DEO v. SHRINIVAS SABATA AND ANOTHER (^[8]), *NEW INDIA ASSURANCE COMPANY LTD., SECUNDEABAD v. ABDUL KHADER JILANI @ JILANI AND ANOTHER* (^[9]), *BALLARI RAJENDRA v. G.GURUMURTHY AND OTHERS* (^[10]), *RAYAPATI VENKATESWAR RAO v.*

MANTAI SAMBASIVA RAO AND ANOTHER (^[11]), G. ANJANEYULU v. ALLA SESHI REDDY AND ANOTHER (^[12]), LINGAMPALLI RAJAM (DIED) BY LR.s. v. COLLIERY MANAGER, MORGAN'S PIT SINGARENI COLLIERIES CO.LTD.(^[13]),NEW INDIA ASSURANCE COMPANY LTD., REP. BY DIVISIONAL MANAGER, HYDERABAD v. KOTAM APPA RAO AND ANOTHER (^[14]), THE NATIONAL INSURANCE CO, LTD., v. MOHD. SALEEM KHAN AND ANOTHER (^[15]), EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT AND ANOTHER v. BHIMRAO MANIKRAO UNHALE (^[16]), HANUMANTHA GOWDA v. DEVARAJU (^[17]), GORLA OBULA REDDY v. K.RAJGOPAL REDDY AND ANOTHER (^[18]), JANATHA MODERN RICE MILLS v. G.SATYANARAYANA (^[19]), NATIONAL INSURANCE COMPANY LTD., v. RAJESH HELMANDGE AND ANOTHER (^[20]),PAMARTHI SUBBA RAO v. H. RAMA RAO AND ANOTHER (^[21]),K.JANARDHAN v. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER (^[22]), PALRAJ v. DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION (^[23]), NATIONAL INSURANCE COMPANY LIMITED, ANANTHAPUR v. D.SIVASANKAR AND ANOTHER (^[24]), RAJ KUMAR v. AJAY KUMAR AND ANOTHER (^[25]), S.SURESH v. ORIENTAL INSURANCE COMPANY LIMITED AND ANOTHER (^[26]) and YADAVA KUMAR v. DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY

LIMITED AND ANOTHER (^[27]).

This Court in *N. SREE RAMULU @ SREE RAMA MURTHY V. B. LAKSHMI NARAYANA AND ANOTHER* (^[28]), by considering all the above rulings culled out 12 principles after analyzing the rulings of Honourable Supreme Court and this court on the subject. Those 12 principles are as follows:

“(a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity.

(b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury;

(c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

(e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the Court where permanent partial disablement results from an injury not specified in Schedule I.

(f) The importance of medical evidence is only in case where disablement in performing duties which the workman was performing earlier cannot be decided without the aid of medical evidence. In case where it can be so decided with or without medical evidence (like amputation of limbs), medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant.

(g) Loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors taken into account.

(h) The loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability. Equating the percentage of loss of earning capacity to the percentage of permanent disability would result in the award of either too low or too high a compensation. What requires to be assessed is the effect of permanent disability on the earning capacity of the injured. This involves ascertainment of what activities the claimant can carry on in spite of permanent disability and what he could not do as a result of the permanent disability; ascertainment of his avocation, profession and nature of work before the accident and also his age; and finding out whether he is totally disabled from earning any kind of livelihood (or) whether in spite of permanent disability, he can still effectively carry on the activities and functions, which he was earlier carrying on (or) whether he

was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. In para.14 of (2011) 1 SCC 343 and in para.8 of (2012) 2 SCC 267 appropriate guidance is available.

(i) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Commissioner/Court with reference to the evidence in entirety.

(j) Where a claimant is a workman who suffered injuries in an accident and his employer either provides for pension after retiring the workman on the grounds of medical invalidation or the dependants of the claimant are given appointment on compassionate grounds, he has a duty to disclose these facts and they would have a material bearing on the ascertainment of the percentage of loss of earning capacity.

(k) It is a question of fact in each case whether there is permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability.

(l) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim

could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.”

One of the principle suggest, when the evidence of Medical Officer made it clear that injured is not fit to work as a driver on account of injury, such evidence cannot be discarded unless there is material to show that Medical Officer's opinion is wrong.

Here, the Insurance Company except putting suggestions, did not elicit anything from the Medical Officer with regard to his assessment that on account of the injury, the appellant is not fit to work as driver.

From the 12 points formulated by this court on the basis of all the decisions which are also relied here that the opinion of Medical Officer as to the percentage of loss of earning capacity would normally bind this court, therefore, taking that aspect into consideration, taking 35% loss of earning capacity by lower authority is wrong. Lower authority ought to have taken loss of earning capacity as 100%, particularly, when Medical Officer assertively stated that appellant herein is not fit as driver.

Learned advocate for Insurance Company submitted that Honourable Supreme Court in *RAMPRASAD BALMIKI v. ANIL KUMAR JAIN AND OTHERS* (6th cited) held that a person can even drive a

vehicle even with artificial limbs therefore, unless the claim for 100% loss of earning capacity is supported by any material, it cannot be taken into account.

But here in our case when the Medical Officer categorically deposed that appellant is not fit as driver, decision relied on by Insurance Company has no application.

Medical Officer can only assess the permanent disability of the patient but loss of earning capacity has to be assessed by the court only on the basis of evidence and nature of injury. Here when the Medical Officer considering the nature of injuries, stated that appellant cannot drive the vehicle which is supported with the version of the claimant himself taking 35% of loss of earning capacity without any basis, in my view, is not a correct approach and lower authority has committed error in this regard.

On a total consideration of material on record and the decisions relied on by both parties, I am of the considered view that lower authority ought to have taken the loss of earning capacity at 100% and that the award of the lower authority has to be modified to that extent.

Now if the compensation is calculated by taking the loss of earning capacity at 100%, it would come to Rs.3,65,482/- (wages of the appellant taken by the lower authority is at Rs.3,595/- factor applicable to the age of appellant is Rs.169.44 i.e., $\text{Rs.3,595/-} \times 60/100 \times 169.44$). Appellant is entitled for this amount with interest at 12% from the date of accident till payment as per the decision of Honourable Supreme Court in *SABERABIBI YAKUBBHAI SHAIKH AND OTHERS v. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS* (3rd cited) and the Insurance Company has to pay the difference amount to the appellant within 60 days from the date of receipt of copy of this order.

This Civil Miscellaneous Appeal is accordingly

allowed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 1-3-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.230 OF 2006

Dated 1-3-2016

Dvs

[1] 2004 ACJ 428

- [\[2\]](#) (2012) 12 SCC 540
- [\[3\]](#) (2014) 2 SCC 298
- [\[4\]](#) 2000 ACJ 801
- [\[5\]](#) 2011 ACJ 1425
- [\[6\]](#) 2008 (6) ALD 82 (SC)
- [\[7\]](#) 2003 (4) ALD 183 (DB)
- [\[8\]](#) AIR 1976 SC 222
- [\[9\]](#) 2007 (4) ALT 607 (D.B.)
- [\[10\]](#) 2001 (1) ALD 423
- [\[11\]](#) 2001 (1) ALD 435
- [\[12\]](#) 2002 ACJ 1392
- [\[13\]](#) 2000 (1) ALD 554
- [\[14\]](#) 1995 (3) ALD 1108
- [\[15\]](#) 1991 (2) A.P.L.J.(H.C.) 337
- [\[16\]](#) 1997 ACJ 1141
- [\[17\]](#) 1996 ACJ 1253
- [\[18\]](#) 2004 (6) ALD 534
- [\[19\]](#) 1995 (1) ALD 205 (2)
- [\[20\]](#) 2001 (3) ALD 177
- [\[21\]](#) 2008 (3) ALD 650 (DB)
- [\[22\]](#) (2008) 8 SCC 518
- [\[23\]](#) (2010) 10 SCC 347
- [\[24\]](#) 2006(4) ALD 398
- [\[25\]](#) 2011 ACJ 1
- [\[26\]](#) (2010) 13 SCC 777
- [\[27\]](#) (2010) 10 SCC 341
- [\[28\]](#) 2013 (5) ALD 249