

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.335 OF 2006

Dated 1-3-2016

Between:

_____ Shaik Nagur.

_____..Appellant.

And:

_____ S.Koteswara Rao and another.

_____..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.335 OF 2006

JUDGMENT:

This appeal is preferred questioning the order dated 30-1-2006 in W.C.No.58 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour Circle-II, Guntur.

Appellant herein submitted application to the Commissioner for Workmen's Compensation, Guntur alleging that he was cleaner on lorry bearing No.AP - 7T - 1998 belonging to first respondent herein and on 24-3-2004, he received injuries while working as cleaner on the said lorry during course of his employment and that he is entitled for a compensation of Rs.2,50,000/- with interest.

Insurance company resisted the claim of the appellant and contended that it is not liable to pay any compensation as per the terms and conditions of policy, unless the relationship of employee and employer between appellant and first respondent herein is established. On these contentions, lower authority conducted enquiry, during which, two witnesses are examined and ten documents are marked on behalf of appellant whereas no documents are marked and no witnesses are examined on behalf of Insurance Company. On a consideration of oral and documentary evidence, lower authority granted compensation of

Rs.59,624/- by taking the loss of earning capacity of the appellant as 20%. Now aggrieved by quantum, injured preferred the present appeal.

Heard arguments.

Advocate for appellant mainly contended that the lower authority has erred in taking the loss of earning capacity at 20% when there is deformity of leg in the distal third of leg with mal-union of right tibia on account of which, the appellant cannot do any work. He further submitted that lower authority ought to have taken loss of earning capacity at 100%. He further submitted that lower authority has not justified in taking 20% only as loss of earning capacity and the disablement sustained by worker amounts to total disability. He further submitted that the findings of the lower authority are contrary to provisions of Workmen Compensation Act and therefore, the award has to be modified by enhancing compensation.

To support his argument, he placed reliance on some rulings of the Supreme Court and High Courts.

On the other hand, advocate for Insurance Company submitted that basing on medical evidence only, the lower authority has taken 20% as loss of earning capacity and there is no illegality in the award of the lower authority. Learned counsel for Insurance Company also referred to some rulings in support of his submission and contended that there are no grounds to interfere with the award dated 30-1-2006.

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:

As seen from the record, appellant received injuries to his left leg and right leg on 24-3-2004 during course of his employment in a road accident due to collision between two vehicles. Medical Officer who treated the injured at Government Hospital, Guntur is

examined as A.W.2 and he deposed in his evidence that on 24-3-2004, appellant was admitted in Orthopedic Ward for fracture of Shaft of Femur on left side with extra capsular fracture neck of femur on left side and fracture on both bones of right leg. He further deposed that the patient left the hospital against medical advice on 9-4-2004 and he was admitted in Shailaja Multi Specialty Hospital, Guntur on 9-4-2004 and underwent surgery on internal fixation of shaft of femur and ECNF fracture on left side and was discharged on 5-5-2004. He deposed that the percentage of disability is 20% which is permanent and partial. He deposed that appellant can do his duty as cleaner but with some difficulty. Considering this part of evidence of Medical Officer, lower authority assessed loss of earning capacity at 20% and calculated compensation on that basis. Now the grievance of the injured is that he was 23 years old as on the date of accident and on account of fracture of Shaft of Femur on left side with extra capsular fracture neck of femur on left side and fracture on both bones of right leg, it is highly difficult for him to do any work and he deposed in his evidence to that effect that the lower authority only on the basis of percentage of disability has fixed loss of earning capacity also of the same percentage but the percentage of disability is different from percentage of loss of earning capacity and that the appellant is entitled to get 100% loss of earning capacity.

Learned Advocate for appellant referred to the following rulings.

PRATAP NARAIN SINGH DEO v. SHRINIVAS SABATA AND ANOTHER (^[1]), *NEW INDIA ASSURANCE COMPANY LTD., SECUNDEABAD v. ABDUL KHADER JILANI @ JILANI AND ANOTHER* (^[2]), *BALLARI RAJENDRA v. G.GURUMURTHY AND OTHERS* (^[3]), *RAYAPATI VENKATESWAR RAO v. MANTAI SAMBASIVA RAO AND ANOTHER* (^[4]), G.

ANJANEYULU v. ALLA SESHI REDDY AND ANOTHER ^[5], LINGAMPALLI RAJAM (DIED) BY LRs. v. COLLIERY MANAGER, MORGAN'S PIT SINGARENI COLLIERIES CO.LTD.^[6], NEW INDIA ASSURANCE COMPANY LTD., REP. BY DIVISIONAL MANAGER, HYDERABAD v. KOTAM APPA RAO AND ANOTHER ^[7], THE NATIONAL INSURANCE CO, LTD., v. MOHD. SALEEM KHAN AND ANOTHER ^[8], EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT AND ANOTHER v. BHIMRAO MANIKRAO UNHALE ^[9], HANUMANTHA GOWDA v. DEVARAJU ^[10], GORLA OBULA REDDY v. K.RAJGOPAL REDDY AND ANOTHER ^[11], JANATHA MODERN RICE MILLS v. G.SATYANARAYANA ^[12], NATIONAL INSURANCE COMPANY LTD., v. RAJESH HELMANDGE AND ANOTHER ^[13], PAMARTHI SUBBA RAO v. H. RAMA RAO AND ANOTHER ^[14], K.JANARDHAN v. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER ^[15], PALRAJ v. DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION ^[16], NATIONAL INSURANCE COMPANY LIMITED, ANANTHAPUR v. D.SIVASANKAR AND ANOTHER ^[17], RAJ KUMAR v. AJAY KUMAR AND ANOTHER ^[18], S.SURESH v. ORIENTAL INSURANCE COMPANY LIMITED AND ANOTHER ^[19] AND YADAVA KUMAR v. DIVISIONAL MANAGER, NATIONAL INSURANCE COMPANY LIMITED AND ANOTHER ^[20].

This Court in N. SREE RAMULU @ SREE RAMA MURTHY V. B. LAKSHMI NARAYANA AND ANOTHER

[\[21\]](#)), culled out 12 principles after analyzing of 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) 1SCC 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.”

It is clear from the above points that loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factor to be taken into account. From the above points, it is clear that opinion of the Medical Practitioner as to the percentage of loss of earning capacity would be normally binding on the court.

Here as seen from the evidence of A.W.2, he specifically stated that the appellant herein can attend to his duties as cleaner but what he stated is that he has to face some difficulty in discharging duties of cleaner. So it is not a case of total disablement to work as cleaner, on the other hand, it is a case where the appellant would be facing some difficulty in working as cleaner. That difficulty was assessed by 20% by the lower authority by taking it from the percentage of disability as assessed by the Medical Officer. When the evidence of Medical Officer indicates that the appellant can work as cleaner with the above injuries, the contention of the appellant that he cannot do any work and that the loss of earning capacity has to be taken as 100% is not at all tenable and therefore, on the basis of evidence, the contention of the appellant with regard to his claim at 100% loss of earning capacity cannot be accepted.

On a scrutiny of material, I am of the considered view that the lower authority has rightly fixed compensation and I do not find any grounds to interfere with the findings of the lower authority.

Accordingly, this Civil Miscellaneous Appeal is dismissed. 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.

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- [\[1\]](#) AIR 1976 SC 222
- [\[2\]](#) 2007 (4) ALT 607 (D.B.)
- [\[3\]](#) 2001 (1) ALD 423
- [\[4\]](#) 2001 (1) ALD 435
- [\[5\]](#) 2002 ACJ 1392
- [\[6\]](#) 2000 (1) ALD 554
- [\[7\]](#) 1995 (3) ALD 1108
- [\[8\]](#) 1991 (2) A.P.L.J.(H.C.) 3
- [\[9\]](#) 1997 ACJ 1141
- [\[10\]](#) 1996 ACJ 1253
- [\[11\]](#) 2004 (6) ALD 534
- [\[12\]](#) 1995 (1) ALD 205 (2)
- [\[13\]](#) 2001 (3) ALD 177

- [\[14\]](#) 2008 (3) ALD 650 (DB)
- [\[15\]](#) (2008) 8 SCC 518
- [\[16\]](#) (2010) 10 SCC 347
- [\[17\]](#) 2006(4) ALD 398
- [\[18\]](#) 2011 ACJ 1
- [\[19\]](#) (2010) 13 SCC 777
- [\[20\]](#) (2010) 10 SCC 341
- [\[21\]](#) 2013 (5) ALD 249