

THE HON'BLE SMT JUSTICE ANIS

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C.M.A.NO.945 OF 2006

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JUDGMENT:

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This appeal is filed by the appellant-National Insurance Company against the order dt.26.11.2005 passed in W.C.C.No.23 of 2005 by the Commissioner For Workmen's Compensation, Eluru & Assistant Commissioner of Labour, Eluru wherein the second respondent/O.P.1 being the owner of the vehicle and also the appellant/insurer were directed to deposit jointly and severally an amount of Rs.4,61,716/- towards compensation payable to the first respondent/applicant.

The facts of the case in brief are that while the applicant was working as Driver on Lorry bearing No.37W 0069, he met with an accident on 28.02.2004 at 4.00 a.m., near Panapana, Balasore District, Orissa State at NH.5 Road and received multiple injuries due to the negligent driving of the driver of vehicle bearing No.UP38N 7811 and immediately he was shifted to Government Hospital, Balasore and thereafter shifted to Chaitanya Orthopaedic Hospital, Tanuku. He spent nearly Rs.65,000/- for treatment. Because of the accident, he

sustained permanent disability and is unable to work as driver. He used to earn Rs.3,500/- per month as salary and batta of Rs.50/- per day.

The court below framed three issues and examined AW-1 and AW-2 and got marked Exs.A-1 to A-6 on behalf of the applicant and on behalf of opposite party Ex.B-1 was marked and no witnesses were examined on their behalf.

Basing on the evidence of AW-1 and AW-2 and also Ex.A-1 F.I.R and Ex.A-2 Wound Certificate, the Tribunal held that the applicant met with the accident during the course of employment as driver and the insurance policy is in force on the date of accident and accordingly held that the claimant is entitled for compensation of Rs.4,61,716/-.

The learned counsel for appellant argued that the amount claimed by the first respondent is too excessive and that the accident occurred due to the negligence of the driver of other vehicle. Therefore, it is not liable to pay any compensation to the first respondent. It is also argued that though the Doctor issued the disability certificate stating that there is 30% disability to the applicant, the Commissioner passed the orders without following the procedure under Workmen's Compensation Act and awarded excess

compensation against the appellant herein and finally prayed to allow the appeal.

The learned counsel for the first respondent contended that even though the disability is 30%, the Tribunal was right in awarding the amount of compensation, since driving vehicle is the only means of livelihood for himself as well as the members of his family and he will never be able to work as a driver again. In support of his contention, the learned counsel placed reliance on a judgment of the Apex Court in **JAKIR HUSSEIN VS. SABIR AND OTHERS**^[1] wherein the Apex Court held as follows:

“Further, with respect to the permanent disablement suffered by the appellant, Mr.K.Parameshwara, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr.P.K.Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment was taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wring and

nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalized for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case. The Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55%, respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact, namely, that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed.

In Raj Kumar v. Ajay kumar (2011) 1 SCC 343) this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Thus, by applying the

appropriate multiplier as per the principles laid down by this Court in **Sarala Verma's** case (2009) 6 SCC 121 the total loss of future earnings of the appellant will be at Rs.54,000 x 16 = 8,64,000/-."

Having regard to the submissions made by the learned counsel appearing for both the parties, the point which has to be decided in this appeal is as follows:

- 1) Whether the appellant is liable to pay compensation to the first respondent or not?

P O I N T: A perusal of the evidence of AW-2 Civil Assistant Surgeon, who was examined by the first respondent/applicant found that the first respondent suffered with 30% disability right femur with limitation of right knee and he cannot function as driver and climb into the cabin and getting down freely and cannot operate foot-controlled pedals freely. The Tribunal basing on the evidence of AW-2 and also basing on the monthly earnings of the first respondent/applicant, rightly awarded the just and reasonable compensation.

In view of above facts and circumstances of the case, I am of the opinion that no interference of the order of the Tribunal is warranted.

The appeal is, therefore, dismissed. Miscellaneous

petitions pending, if any, shall stand closed. No order as to costs.

ANIS, J

Dt.02.03.2016
TJS

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^[1]) (2015) 7 SCC 252