

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.1105 OF 2005

Dated 9-2-2016

Between:

The Oriental Insurance Co. Ltd., represented by its
Divisional Manager, Tanuku, West Godavari District.

..Appellant.

And:

Seva Sivaji and others.

..Respondents.

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JUDGMENT:

This appeal is preferred questioning award dated 19th April, 2005 in W.C.No.24 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

Respondents 2 to 4 herein are legal representatives of late Sri Seva Sivaji who worked as driver on lorry bearing No.A.P. 16 W 2354 belonging to 6th respondent herein.

The worker sustained injury during course of his employment on 5-10-2002 at about 2.30 P.M. on the outskirts of Boddugudem village within Chinthuru Police Station limits. Respondents herein claimed a sum of Rs.3,50,000/- as compensation and the lower authority, on a consideration of oral and documentary evidence, granted Rs.3,67,011/- as compensation. Though respondents herein contended that worker died due to injuries sustained in the accident, lower authority has not accepted the said contention but granted compensation only for the injuries. Aggrieved by the quantum, Insurance Company preferred the present appeal.

Heard arguments.

Advocate for appellant submitted that when the Medical Officer assessed disability at 50%, lower authority was not right in taking the loss of earning capacity at 100% without any material on record and that the findings of the lower authority is perverse and unsustainable. It is further submitted that even the Medical Officer did not whisper anything in his evidence as to the loss of earning capacity and he only deposed about the disability certificate Ex.A.12 and that cannot be taken as basis to assess the loss of earning capacity at 100%. Learned advocate submitted that the lower authority grossly erred in taking loss of earning capacity at 100% and at least to that extent, the award has to be modified and compensation has to be reduced. It is also submitted that injuries sustained by the worker were persona injuries and claim of those injuries would not survive to his legal representatives of that injured after his death and doctrines of *actio personalis moritur cum persona* is attracted.

On the other hand, advocate for claimants submitted that the very objection with regard to right of legal heirs to maintain the claim was urged before lower authority also and the lower authority on a consideration of legal position disbelieved the objection of the Insurance Company and recorded that the said maxim has no application to the claims under the Workmen's Compensation Act basing on judgment of High courts. It is further submitted that from the pleadings and findings, it is clear that the worker was completely bed ridden after the accident and he is not moving from the bed and taking the same into consideration, the lower authority has fixed the loss of earning capacity at 100% and there is no wrong in the findings of the lower authority.

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

POINT:

As seen from the record, the claim is made by injured himself and during pendency of proceedings, he died and thereafter, respondents 1 to 4 herein were brought on record as L.R. of deceased worker. As seen from the record, on 3-10-2002, the deceased worker went to Bhilaspur of Madhya Pradesh with coconut load from Eluru under the instructions of 5th respondent owner, as driver of lorry bearing No. A.P. 16 W 2354 and while returning to Eluru on 5-10-2002, and when they reached Boddugudem village, lorry coming in opposite direction came at high speed, worker could not avert accident. In spite of applying break, lorry turned turtle and worker sustained injuries all over the body.

As seen from the record, the worker sustained injuries to one of his leg and the disability was assessed by competent civil surgeon at 50%. Now the objection of the appellant is that when the Medical Officer assessed disability at 50%, lower authority taking the loss of earning capacity at 100% for the purpose of calculating compensation is not permissible.

In workmen compensation cases, loss of earning capacity is entirely different from the percentage of disability. Trial court has to work out loss of earning capacity from the facts of the case, nature of injury and the medical evidence. When the Medical Officer assessed functional disability at 50%, for a driver, functional disability of 50% to leg would definitely result in 100% loss of earning capacity. Further in this case, specific pleading in the claim petition is that worker on account of injuries is completely bed ridden and confined to bed and he was not able to move from the bed without any assistance. Even the wife who is examined as a witness as A.W.1 stated that her husband was completely bed ridden due to injuries till his death and that part of evidence remained unchallenged.

Considering the same, lower authority has taken the loss of earning capacity at 100% and calculated compensation on that basis. I do not find any wrong in the approach of lower authority in taking loss of earning capacity at 100%. Therefore, the contention of advocate for appellant with regard to loss of earning capacity cannot be accepted.

On a scrutiny of material on record, I am of the considered view that lower authority has not committed any error in taking 100% as loss of earning capacity in calculating compensation and that there are no grounds to interfere with the award dated 19th April, 2005.

For these reasons, this C.M.A. is dismissed but under circumstances, without costs.

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

JUSTICE S.RAVI
KUMAR

Dated 9-2-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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