

.HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.1091 of 2008
&
CROSS OBJECTIONS (CMAMP (SR) No.50010 of 2008)

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Dated 1-4-2016

Between:

M/s.The New India Assurance Co.,Ltd., represented
by its Branch Manager, Branch Office: Prakasham Bazar,
Nalgonda Town and District and another.

..Appellants.

And:

Thanneeru @ Panneeru Anjaiah and another.

..Respondents.

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JUDGMENT:

This appeal is preferred questioning the order dated 31-8-2007 in W.C.No.258 of 2006 on the file of Commissioner for Workmen's Compensation- Assistant Commissioner of Labour, Nalgonda.

First respondent herein filed application before Commissioner for Workmen's Compensation contending that he was working as driver on auto bearing No.AP-24-V-3199 under the employment of second respondent herein and on 14-10-2005 while driving the auto and after reaching outskirts of Chinthapalli, he lost control of the auto and as a result, he sustained fracture of right fibula, fracture on right tibia, fracture of 4th, 6th and 8th ribs of right side and other injuries all over the body and that he incurred huge amount for his treatment and as he

sustained injuries during course of his employment, he is entitled for compensation of Rs.2,50,000/- He also contended that he is getting salary of Rs.4,500/- per month as auto driver.

Second respondent herein filed counter admitting the relationship of employee and employer between the claimant and himself and also supported the version of claimant with regard to wages.

Insurance company filed counter disputing the claim of first respondent herein and contended that Insurance company is not liable to pay any compensation and it contended that claimant has to strictly prove relationship of employee and employer.

On these allegations, lower authority conducted enquiry during which, two witnesses are examined and seven documents are marked on behalf of claimant and no witness is examined and Insurance policy is marked as Ex.B.1. On an overall consideration of oral and documentary evidence, lower authority granted Rs.1,64,739/- taking the wages at Rs.3,214/- and the loss of earning capacity at 40%. Aggrieved by the order of lower authority, Insurance Company preferred appeal, and not satisfied with quantum, the claimant filed cross-objections and contended that lower authority ought to have granted wage at Rs.4,500/- which is not disputed by the other side.

Heard both sides.

It is submitted that lower authority is wrong in conducting loss of earning capacity at 40% as the disability is only 30% as per the disability certificate. It is further submitted that injury sustained by claimant in due course is completely healed and there cannot be any permanent loss, therefore, loss of earning capacity as fixed by the lower authority is correct. It is further submitted that even as per the disability certificate was issued only for the purpose of claiming benefits as

handicapped person and it is not for any other purpose, for these reasons, the compensation fixed by the lower authority has to be reduced by taking the loss of earning capacity at 30%.

On the other hand, advocate for claimant submitted that though Medical Officer has assessed the loss of earning capacity at 45%, lower authority has only taken 40% as loss of earning capacity as the claimant sustained fractures with which he cannot carry on his profession of driving, lower authority was right in taking loss of earning capacity at 40%. It is further submitted that lower authority instead of taking wages at Rs.4,500/- per month took only Rs.3,214/- and therefore, the compensation has to be modified by calculating it by taking the wages at Rs.4,500/- and the cross objections filed by the claimant are to be allowed.

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

POINT:

There is no dispute with regard to relationship of employee and employer between 1st respondent and 2nd respondent herein and there is also no dispute that the first respondent herein received injuries on 14-10-2005 during course of his employment.

As seen from the evidence of Medical Officer who is orthopedic surgeon, Devarakonda, first respondent herein sustained fracture of both bones of right leg and sustained disability of 'Post traumatic' (fracture of both bones of right leg) stiffness of right knee joint. Thus the Medical Officer assessed disability at 30%. He also deposed that first respondent herein cannot do his work as he was doing previously and assessed loss of earning capacity at 45%. Disability certificate issued by Medical Officer is marked as Ex.A.4. Though this Medical Officer is examined on behalf of Insurance Company, nothing could be elicited

from him to discredit his testimony with regard to percentage of disability and percentage of loss of earning capacity. Except putting suggestions, nothing is placed before the lower authority to show that the percentage assessed by the Medical Officer was high and excessive. Lower authority by considering the evidence of Medical Officer and the evidence of claimants with reference to the injuries recorded in the Medical Certificate and Disability Certificate, fixed loss of earning capacity at 45% for the purpose of fixing compensation.

I do not find any wrong in the approach of lower authority nor there is any wrong appreciation of evidence in arriving at 40% loss of earning capacity.

On a scrutiny of material, I am of the view that objection raised by Insurance Company with regard to loss of earning capacity as taken by lower authority is not well founded and therefore, the same is negated.

Coming to the objection of the claimant, with regard to wages of the injured, P.W.1 deposed in his evidence that he was getting an amount of Rs.4,500/- per month as salary from his employer i.e., second respondent herein but he has not produced any evidence to support his statement with regard to wages.

Advocate for claimant submitted that owner of the auto i.e., second respondent herein filed counter admitting that a sum of Rs.4,500/- is paid as salary and therefore, the evidence of claimant is supported with the counter averments of the employer. Admittedly, owner is not examined and no other person is examined to corroborate the version of claimant with regard to wages. The plea raised in the counter cannot be treated as evidence even for corroboration purpose. Therefore, without examination of owner who pleaded that he paid Rs.4,500/- as salary, contention of claimant with regard to wages cannot be accepted and the lower authority has rightly not considered the quantum of wages as deposed by P.W.1.

As seen from the record, lower authority took the minimum wages fixed by the Government to light motor vehicle driver and claimant being auto driver, he would only fall under the category of light motor vehicle driver and Commissioner for Workmen's Compensation was right in taking the minimum wages in the absence of positive proof with regard to wages. Therefore, the cross-objection of the claimant with regard to enhancement of compensation by taking the wages at Rs.4,500/- cannot be accepted.

On an overall consideration of material on record, I do not find any ground to interfere with the order of the lower authority, therefore, both appeal and cross objections are liable to be dismissed.

Accordingly, this Civil Miscellaneous Appeal and Cross- Objections are 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 1-4-2016.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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