

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1075 of 2008

And

CROSS OBJECTION (SR) No. of 2008

JUDGMENT:

This appeal is preferred questioning the order dated 07.01.2006 in W.C.No.12 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant commissioner of Labour, Nalgonda.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he was working as driver on Auto bearing No.AP 24U 8984 under the employment of second respondent herein and on 30.12.2004 at about 5.00 p.m. while he was driving the said Auto with passengers from Chintapalli and proceeding towards pendlipakala, due to puncher of front tire, the auto turned turtle, as a result, he and passengers sustained grievous injuries. He contended that he received fracture of left tibia, fracture of left fibula, fracture and dislocation of 5th and 6th ribs on right side, grievous injury on left foot, grievous injury on left shoulder, fracture and dislocation of left shoulder and multiple injuries all over the body and that he was getting a salary of Rs.4,000/- per month and that he is entitled for compensation of Rs.3 lakhs. This claim was resisted by the insurance company contending that policy does not cover the risk of claim and that insurance company is not liable to pay any compensation and prayed for dismissal of the main appeal. Lower authority conducted enquiry, during which, claimant was examined as PW.1

and Medical officer was examined as PW.2 and the claimant also got marked 7 documents to support his claim. On behalf of insurance company, no one is examined, but the policy is marked as Ex.B1, and on a over all consideration of oral and documentary evidence, lower authority granted Rs.2,00,163/- by taking the loss of earning capacity at 50% and wages at Rs.3,014/- per month. Aggrieved by the order of lower authority, insurance company preferred the present appeal.

3. Claimant also filed cross-objections contending that the lower authority failed to take into consideration the wages, which are admitted by the owner at Rs.4,000/- per month, and so also, loss of earning capacity taken by the lower authority.

4. Heard both sides.

5. Advocate for appellant submitted that the lower authority has erred in taking the disability as loss of earning capacity is distinct and separate and when there is no evidence showing the actual percentage of loss of earning capacity. It is submitted that the lower authority was not right in taking disability as loss of earning capacity. It is further submitted that claimant has not suffered any permanent disability and he can drive the auto and also do other works, therefore taking loss of earning capacity at 50% is highly excessive and imaginary.

6. On the other hand advocate for claimant submitted that lower authority ought to have taken the wages at Rs.4,000/- per month, which is admitted by the owner in his counter. He further submitted that on account of the injuries, claimant completely lost his earning capacity, therefore, lower authority ought to have taken the loss of earning capacity at 100%. He submitted that

compensation granted by the lower authority has to be modified and enhanced by taking the loss of earning capacity at 100%.

7. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Nalgonda is legal, proper and correct?

POINT:

8. Admittedly, first respondent herein received some injuries on 30.12.2004 while he was under the employment of second respondent herein as auto driver. Injured himself is examined as PW.1 and he reiterated injuries and also the manner in which the accident took place. The medical officer, who is Orthopedic surgeon is examined as PW.2 and he deposed that first respondent herein sustained the fracture of both bones of left leg and stated that he noticed disability of 'Post traumatic and shortening and stiffness of both ankle and knee joint'. He deposed that percentage of disability is 55%. He denied the suggestion that he issued disability certificate with excessive percentage to help the applicant. Considering the above evidence of PW.2, lower authority has fixed the loss of earning capacity at 50% by taking nature and gravity of the injuries into consideration.

9. According to advocate for insurance company, the loss of earning capacity has to be taken less than 50%, though claimant contended that he sustained 100% loss of earning capacity as there is absolutely no evidence to show that on account of this injury, claimant completely lost his profession, even the medical officer has not stated anything with regard to the capacity of claimant to do the job of driver. As seen from the record, lower authority by considering the percentage of disability

assessed the loss of earning capacity at 50%, and I do not find any wrong in the findings of the lower authority with regard to percentage of disability.

10. Advocate for claimant contended that lower authority was wrong in taking Rs.3,014/- per month as wages when the owner admitted in his counter that he was paying Rs.4,000/- per month. Admittedly, owner is not examined and claimant has not produced any salary certificate issued by the owner to show that he was getting Rs.4,000/- per month.

11. As rightly pointed out by advocate for insurance company the plea in counter cannot be taken as evidence and as the owner did not come into the witness box and deposed that he was paying Rs.4,000/- per month, lower authority was right in taking the minimum wages for fixing compensation. I do not find any wrong in the approach of lower authority in taking the minimum wages when there was no positive evidence with regard to the wages of injured. Therefore, the objection of claimant with regard to wages is not tenable.

12. Considering the material on record, I am of the view that lower authority has not committed any error in fixing compensation by taking the loss of earning capacity at 50% and wages at Rs.3,014/- per month, therefore the appeal and cross objections are devoid of merits.

13. Accordingly, the appeal and cross objections are dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 18-04-2016.

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