

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1088 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 15.09.2005 in W.C.No.9 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") contending that he was working as driver under second respondent on lorry bearing No.AP 9V 1128, on a monthly salary of Rs.4,000/- with daily batta of Rs.50/- and on 27.11.2004, while he was discharging his duties as driver, he fell down from the top of the lorry while tightening the rope on the tarpaulin after loading of paddy in Sri Srinivasa Modern Rice Mill and sustained grievous injuries all over his body and that he was shifted to Sri Sai Sanjeevani Hospital, Tadepalligudem for treatment. He further contended that due to spinal cord injury, he is unable to sit and not in a position to perform his duties as driver and entitled for compensation of Rs.4,00,000/-. The application was resisted by insurance company and lower authority conducted enquiry, during which, three witnesses are examined and 4 documents are marked on behalf of claimant, whereas no witness is examined on behalf of insurance company but one document i.e., insurance policy is marked, and on a over all consideration of oral and documentary evidence, lower authority granted Rs.3,91,689/- as compensation by taking loss of earning capacity as 100% and aggrieved by the award of lower authority, insurance company

preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that as per medical certificate and the evidence of Doctor, first respondent herein sustained only 40% of disability, but lower authority took 100% as loss of earning capacity contrary to the certificate issued by the doctor and therefore the compensation has to be reduced by taking loss of earning capacity at 40%. He further submitted that first respondent has not produced any evidence to show that he lost his job on account of the injury, for these reasons, the award of lower authority has to be modified by reducing compensation proportionately by taking loss of earning capacity at 40%.

5. On the other hand advocate for claimant supported the order of lower authority and submitted that there are no grounds to interfere in view of the evidence of medical officer.

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

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

POINT:

6. There is no dispute with regard to relationship of employee and employer between first and second respondents, so also, existing valid policy on the date of incident. It is specific case of claimant that due to spinal cord injury he is unable to sit and perform his duty as a driver thereby sustained 100% loss of earning capacity. Medical officer, who treated the injured, is examined as AW.2, who is Civil Assistant Surgeon in Government Head quarters hospital, Eluru. He deposed that he examined the injured on 25.06.2005 and found suffering with 40% disability as a result of mal-united fractures of distal radial of both wrists with

limitation of rotation of flexions of wrists. He deposed that injured cannot work as a driver. In the cross-examination, it was suggested to him that the injured can work as a driver by taking physiotherapy, and doctor denied that suggestion. It was also suggested to the medical officer that disability was assessed in excess, which is also denied. It was further suggested to the medical officer that injured can drive the vehicle after a lapse of sometime and can attend to the duties as driver. But these suggestions were also denied and deposed emphatically that injured cannot work as a driver. Considering such evidence, lower authority held that loss of earning capacity has to be taken as 100%.

7. The main grievance of insurance company is as the medical officer assessed disability at 40% taking loss of earning capacity at 100% is incorrect. But the contention of insurance company cannot be accepted because it is well settled law that percentage of disability is different from percentage of loss of earning capacity. When the medical officer on examination deposed that injured cannot work as driver due to the injuries, for which, there is no rebuttal evidence on behalf of insurance company, therefore testimony of medical officer cannot be discarded. In the absence of any such evidence, the objection of insurance company with regard to loss of earning capacity assessed by lower authority cannot be accepted.

8. On a scrutiny of the material on record, particularly, the evidence of medical officer, which is also extracted in the order, I am of the view that lower authority has not committed any error in taking loss of earning capacity at 100% while fixing compensation.

9. For these reasons, it is held that appeal is devoid of

merits and liable to be dismissed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 02-06-2016.

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