

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1087 of 2008

Date:03.06.2016

Between:

Sriramula Ravi Gangadhara Kumar

... Appellant.

AND

Shaik Mahboob Basha and another.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.1087 of 2008

JUDGMENT:

This appeal is preferred against order dated 11-05-2007 in W.C.No.28/2005 on the file of Assistant Commissioner of Labour, Circle-II, Guntur who is Commissioner for Workmen's Compensation.

2. Appellant herein submitted application under Section 22 of the Workmen's Compensation Act contending that he was employed as a Cleaner on lorry bearing No.AP26U 6577 belonging to first respondent herein, which was insured with second respondent herein and that on intervening night of 19/20-03-2005, he met with an accident during his course of employment and he was 23 years old and drawing a salary of Rs.3,000/- as on the date of the accident and entitled for compensation.

The claim was resisted by the Insurance Company and the lower authority, on a consideration of oral and documentary evidence, awarded a compensation of Rs.91,871/- by taking minimum wages admissible to a Cleaner at Rs.2,320-50 P.S., per month and loss of earning capacity at 30% as determined by the Medical Officer, who was examined as A.W.2. Aggrieved by the award of the lower authority, claimant preferred the present appeal mainly contending that he is entitled for 100% loss of earning capacity, thereby his claim for Rs.3,00,000/- is reasonable and justified.

3. Heard both sides.

4. Advocate for appellant-claimant submitted that on account of injury sustained in the accident, appellant is not able to do any work and he sustained 100% disability and the lower authority took only 30% as the loss of earning capacity, which is contrary to the provisions under Section 2 (I) and Section 4 (c) (ii) & (b) of Workmen's Compensation Act. He further submitted that lower authority has not granted any interest on the compensation amount and for these two reasons, award of the lower authority has to be modified.

5. On the other hand, Advocate for second respondent-Insurance Company submitted that the evidence on record would only disclose that loss of earning capacity was 30% and the lower authority rightly fixed the compensation by taking 30% as loss of earning capacity.

He submitted that so far as interest part is concerned, he would leave the matter to the discretion of the Court and to consider the same in the light of the Judgment of Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED**^[1].

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

7. **Point:-** It is the contention of the appellant that he was employed as Cleaner on lorry bearing No.AP26U 6577 and that he sustained injuries during course of employment on the intervening night of 19/20-03-2005. These aspects are not in dispute. As seen from the evidence, on the intervening night of 19/20-03-2005, the appellant was proceeding from Hujurnagar to Chilakaluripet on lorry bearing No.AP26U 6577 belonging to first respondent herein with cement load and when the lorry reached near AMG Centre, Chilakaluripet, due to the negligence of the lorry driver, the appellant fell down from the lorry and the left rear wheels of the lorry ran over on the right foot of the appellant, as a result, he sustained extensive crush injury to his right foot, which also caused multiple injuries and other minor injuries. It is also clear from the evidence that he was admitted in the Government Hospital, Guntur and he was given treatment as inpatient and his right leg was operated at Government General Hospital, Guntur. Medical Officer examined as A.W.2 deposed as to the nature of injuries and the details of operation conducted on the patient i.e., appellant herein and stated in view of the crush injury to his right foot, there is a deformity and the percentage of disability is 30% and on account of this, he may not perform his normal duties of cleaner. In the cross-examination, he denied the suggestion that 30% disability is on higher side.

The appellant as P.W.1 stated in his evidence that he suffered disability and nowhere, he stated that he is not able to do any work on account of injury sustained by him. In the cross-examination, he deposed that a person working as Cleaner can also attend to other work, but denied the suggestion that he is fit to work as a cleaner.

So there is absolutely no evidence on record to show that injury sustained by appellant caused 100% loss of earning capacity and made the appellant unfit to perform the duties of a cleaner or any other work. When the petitioner himself has not deposed any thing with regard to loss of earning capacity complaining that the lower authority has not properly

appreciated the evidence is not permissible. Lower authority by considering the disability assessed by the medical officer fixed the same percentage as loss of earning capacity also, I do not find any wrong in the approach of the lower authority and the objection of the appellant in this regard is not tenable.

8. Now coming to the second grievance of the appellant-claimant, it is the contention of advocate for appellant that interest ought to have been granted on compensation amount. In **SABERABIBI YAKUBBHAI SHAIKH vs. NATIONAL INSURANCE COMPANY LIMITED¹**, Hon'ble Supreme Court held that claimant is entitled for interest at 12% per annum from the date of accident till deposit, relying on the said decision, the award has to be modified to that extent.

9. For these reasons, Appeal is partly allowed confirming the compensation granted by the lower authority holding that the appellant is entitled for interest at 12% per annum on the compensation amount from the date of the accident till date of realization.

10. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of. No costs.

JUSTICE S. RAVI KUMAR

Date:03.06.2016

mr**b**

[\[1\]](#) (2014) 2 SCC 298