

The Hon'ble Sri Justice A.Shankar Narayana

Civil Miscellaneous Appeal No.1112 of 2004

Judgment:

The only question involved in this Civil Miscellaneous Appeal is, whether the percentage of disability taken by the Commissioner at 80% is correct and whether the appellant/petitioner is entitled to seek 100% permanent disability on account of imputation of his left leg up to thigh in view of the profession pursued by him as an auto driver.

2. The present Appeal arises from Order, dated 11.02.2004, in W.C.No.140 of 2003 on the file of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour - II Circle, Guntur, whereby and whereunder, relying on the oral evidence of a Medical Officer examined as AW.2, who deposed that the appellant was not in a position to walk even without the support of a stick or person, and the documentary evidence *viz.*, Disability Certificate issued by the Medical Board marked as Ex.A.4, reflecting that the appellant sustained 60% permanent disability in the accident and he was subjected to amputation of left leg up to thigh, opined that the percentage of disability

would be 80% so far as the loss of earning capacity of the appellant is concerned and by applying the factor 207.98, taking the age of the appellant as 30 years, awarded the compensation of Rs.2,67,480/- with interest @ 8 % p.a., from the date of accident till the date of realisation in addition to the penalty that may be imposed under Section 4-A (3) of the Workmen's Compensation Act, 1923.

3. Sri T.S.Rayalu, learned Counsel for the appellant, would refer to the ruling in **N.Sree Ramulu @ Sree Rama Murthy vs. B.Lakshmi Narayana and another¹** to support his stand that 100% permanent disability ought to have been considered by the Commissioner.

4. The judgment cited by the learned Counsel for the appellants was a Common Judgment rendered by a learned Single Judge of this Court in a situation where the driver of a lorry sustained injuries to his right leg and fractures to his knees and hip in an accident and the loss of earning capacity was taken at 100%. To that affect, the learned Single Judge recorded his finding in Paragraph 29 of the said Judgment.

¹ 2013 (5) ALD 249

5. When the fact-situation is looked at in the present Appeal, the appellant has suffered amputation of his left leg upto thigh level. Therefore, the Tribunal ought to have considered 100% permanent disability. Hence, the percentage of permanent disability taken by the Tribunal at 80% is enhanced to 100% for reckoning the loss of earning capacity of the appellant. When 100% loss of earning capacity is applied, the appellant would be entitled to get Rs.3,33,683/- ($2674 \times 60 / 100 = 1604.4$; $1604.4 \times 207.98 = 333683.112$).

6. Thus the appellant is entitled to a total sum of Rs.3,33,683/- as against Rs.2,67,480/- granted by the Tribunal, and the same is, accordingly, granted.

7. So far as the rate of interest is concerned, the Tribunal awarded interest at 8% p.a., and the same is maintained on the amount of Rs.2,67,480/- granted by the Tribunal, but on the enhanced amount of Rs.66,203/-, interest at 12% p.a., is granted from the date of accident till the date of realisation.

8. Accordingly, the instant Appeal is allowed modifying the order passed by the Tribunal, by enhancing the

compensation as indicated above, and confirming the same
in all other respects. There shall be no order as to costs.

(A.Shankar Narayana, J)

Dt: 21st September, 2017
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