

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.294 OF 2005

JUDGMENT:

The present appeal is preferred by Opposite Party No.2 - M/s. New India Assurance Company Limited under Section 30 of Workmen's Compensation Act (for short 'Act'), assailing the award, dated 29.11.2004, in W.C. Case No.90 of 2004 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad (for short 'Commissioner'), awarding a compensation of Rs.1,34,786/- for the injuries sustained by applicant, on account of which, loss of earning capacity was assessed at 50%, he being a labourer.

2. Heard Mrs. Kalpana Ekbote, learned standing counsel for appellant - opposite Party no.2, and Sri Mirza Safiulla Baig, learned counsel for respondent No.1 - applicant. The appeal was dismissed against respondent No.2 - opposite party No.1, who is employer, for default, by order, dated 18.03.2016.

3. Respondent No.2 and the appellant herein, who are employer and insurer, are opposite party Nos.1 and 2 in the aforesaid W.C. Case, while respondent No.1 is applicant.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the W.C. Case.

5. The learned standing counsel for the opposite party No.2 - insurer would submit that the doctor though, spoken about the disability to the extent of 35% for the injury sustained by the applicant, and loss of earning capacity of 50%, the Commissioner without examining the loss of earning capacity, just adopted what has been stated by the doctor in his evidence examined as AW.2. It is also the submission of the learned standing counsel that applicant was working as a labourer and the physical disability certificate is bereft of relevant details.

6. The learned counsel for the applicant would submit that the competency of the doctor examined as AW.2 cannot be questioned as the law declared by the Hon'ble Supreme Court is to the effect that to consider the disability, certificate issued by Medical Board is not mandatory. It is his submission that, doctor is competent, even the percentage of loss of earning capacity.

7. Medical Officer is concerned with disability sustained by a patient to the particular organ, but he is not competent to give the percentage of loss of earning capacity, unless the Act provides in its schedule for such and such injury or amputation, disability should be shown that much. Since as mandatory requirement of the statute, the 50% disability assessed by him and taken by the Commissioner though, it is to the extent of 35% spoken to by AW.2 based on the restriction of movements in left shoulder, still, opining that the

Authority has applied its mind and the loss of earning capacity opined by the Commissioner cannot be faulted. In such an event, there cannot be any merit in the present appeal.

Therefore, the present appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2017.
Mgr

