

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CMA No. 39 of 2007

ORDER:

This is an appeal filed against the order dated 09.10.2006 in WC.No.9 of 2005 by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-II Circle, Guntur.

The applicant is the workman, who was injured in the accident. The case of the applicant is that he was working as a cleaner on the lorry bearing No.AP 16V 0833 belonging to opposite party No.1, driven by a driver. Opposite party No.2 is the insurer of the lorry. Stating that the said lorry met with an accident and that the applicant sustained injury, he filed the present application for compensation for the injury sustained during and in the course of employment. He prayed for compensation of Rs.2,50,000/- along with interest at 15% p.a. The opposite parties filed their counters and denied the claim. On behalf of the applicant, he himself was examined as a witness-AW.1 and the Doctor, who treated him was examined as a second witness-AW.2. For the opposite parties, one witness-RW.1 was examined. For the applicant, Exs.A1 to Exs.A.7 and Ex.X.1 were marked. After considering the documentary and oral evidence, the Commissioner for Workmen's Compensation passed the impugned order, wherein he directed payment of compensation of Rs.69,321/-

by both the opposite parties 1 and 2 jointly and severally. Aggrieved by the said order, the present appeal is filed.

Heard Sri N.Subba Rao, learned counsel for the appellant and Sri B.Devanand, learned counsel for the second respondent.

The essential ground raised and argued by the appellant is that the fixation of the loss of earning capacity is too low and that it is not commensurate with the injuries and the medical assessment.

The learned counsel for the respondent, however, fully supports the other passed.

The other facts like the accident; age; adoption of minimum wages for calculation etc, are not very seriously disputed. The Doctor, who was examined as AW.2 clearly deposed about the injuries; surgeries performed etc, and opined that the disability is only 25 to 30%. This evidence is based on the applicant's case sheet and discharges sheet-Ex.A.6. He concluded by saying, he cannot work as a cleaner and to work as a labourer. This part of the evidence is not clear. The cross-examination was perfunctory and is of three lines only. Similarly, the examination of AW.1 is also not clear. There is no oral or documentary evidence filed by the applicant to show the loss of earning capacity. He did not depose that he is unable to work as a cleaner or that he is unable to work in any other job as well. In his chief-examination, he described the injury; pain and suffering, but

in line one of his cross-examination, he admits that “except one injury right knee joint was not healed but other injuries healed”.

In the light of this evidence of A.Ws.1 and 2, the lower Court could not have awarded more than what was awarded. The assessment made by the Doctor is not proved to be wrong. The applicant did not adduce evidence of the loss of earning capacity nor did he depose that he lost all other jobs also. Section 4 (c) (ii) and the explanation of the Workmen’s Compensation Act, 1923 show that the Doctor should be guided by the percentages fixed by the Act itself and cannot decide on any figure.

The learned counsel also relied on a line in the cross-examination of A.W.1, where he said, the owner of the lorry was his brother. He stressed that there is no employer/employee relationship between them. However, it is noticed that opposite party No.1 did give evidence as A.W.3 in this matter. He asserted that the injured was his brother and was working as a cleaner in the lorry. His evidence is not shattered in any way in the cross-examination. The contemporaneous record namely the FIR shows that the accident occurred at about 2.00 a.m and the statement of the injured was recorded between 4:20 a.m. and 5.00 a.m on 19.04.2004. There is no cross-examination on the contents of the FIR or about the accident. In the absence of any such

cross-examination on the contents of the contemporaneous documents; it cannot be argued that a false claim is setup.

The impugned order of the Commissioner is a reasoned order, which has considered all the facts; evidence and circumstances. No grounds were urged or proved to interfere with the same.

For all these reasons, the impugned order dated 09.10.2006 passed in WC.No. 9 of 2005 is confirmed and the appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 08.12.2017
KLP

D.V.S.S. SOMAYAJULU, J

