

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

CMA No. 702 of 2007

ORDER:

This is an appeal filed against the order dated 20.04.2007 in WC.No.7 of 2006 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, Khammam.

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 16U 4307 belonging to opposite party No.1. 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.3,00,000/- along with interest at 12% p.a. The first opposite party filed his counter admitting all the averments, but stated that the second opposite party should indemnify him since he insured the lorry with it. Second opposite party filed his counter denying the averments and the claim. On behalf of the applicant, he himself was examined as a witness-PW.1 and the Doctor, who treated him was examined as a second witness-PW.2. For the applicant, Exs.A1 to Exs.A.11 were marked and for opposite

party Ex.B.1 was 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.1,42,140/- by both the opposite parties 1 and 2 jointly and severally. Aggrieved by the said order, the present appeal is filed.

Heard Sri Ramachandra Reddy Gadi, learned counsel for the appellant and Sri Rajamalla Reddy, learned counsel for the respondents.

The essential grounds urged by the appellant are that

- (a) the Commissioner wrongly awarded compensation contrary to the doctor's assessment.
- (b) that interest should not have been awarded and that too at 12%.

The first and foremost issue that is urged is about the injury and the loss of earning capacity if any. The learned counsel for the appellant argued that the evidence of AW.2 clearly states that the disability is 25% only, but the Commissioner wrongly awarded 50% as the loss of earning capacity. The learned counsel for the respondent submits that the physical disability cannot be equated to loss of earning capacity. He argues that the assessment is, in fact, low and supported the order of the lower Court.

The doctor's evidence and documents assume importance to decide this issue. The certificate issued by the

Medical Board-Ex.A.3 clearly states that the disability is 25%. The Orthopedic surgeon, who signed on Ex.A.3, was examined as AW.2. He clearly deposed about the surgeries conducted on the applicant. Para 5 of his affidavit in lieu of chief-examination is clear about his assessment of the loss of earnings and about the difficulties the applicant will face in the future for his employment. There is no cross-examination on these crucial aspects of the case. Therefore, this Court is of the opinion that the assessment of disability is right in this case. As a corollary to the lack of cross-examination, this Court also holds that the assessment of loss of earning capacity is not really wrong. The doctor stated that the applicant cannot stand or walk for long; cannot do any heavy or hard work and is unfit to work as a lorry cleaner or driver. Therefore, it is clear that the applicant has suffered a loss of earning capacity which is assessed at 50% of his normal earning capacity. This cannot really faulted in the circumstances of the case. As far as the issue of interest is concerned, the same is no longer open in view of the clear judgments of the Hon'ble Supreme Court of India from ***Veda Prakash Garg v. Premidevi and others***¹ till the decision in ***The Oriental Insurance Company Ltd. V. Siby George and Others***².

¹ AIR 1997 SC 3854

² 2012 (12) SCC 540

In view of all the above, the appeal is dismissed. No order as to costs.

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

D.V.S.S. SOMAYAJULU, J

Date: 13.12.2017
KLP

