

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

**C.M.A.No.420 of 2006**

**JUDGMENT:**

This appeal is filed against the orders dated 13.09.2005 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Mahabubnagar in W.C.No.38 of 2003.

The brief facts of the case are that the applicant was driving a jeep bearing No.AP22U-1482 belonging to the first opposite party and insured with second opposite party. The applicant sustained injuries during the course of his employment and therefore, he filed the present application claiming compensation of Rs.3,00,000/- against both the opposite parties.

The first opposite party remained *ex parte*. The second opposite party filed a counter and denied the entire case. On behalf of the applicant, he was examined as AW.1 and the Doctor, who treated the injured/applicant, was examined as AW.2. No oral evidence was let in for the respondents. For the applicant, Exs.A.1 to A.7 were marked and for the second opposite party, the insurance policy was marked as Ex.B.1.

After considering the entire evidence, the Commissioner for Workmen's Compensation awarded a sum of Rs.2,12,657/- to be paid by both the opposite parties. This award is assailed in the present appeal.

The essential ground urged is about the assessment of loss of disability. The Commissioner while awarding compensation assessed loss of earning capacity as 60%, whereas the Doctor deposed that the loss of earning capacity is only 40%. Therefore, the short and simple question urged in this appeal is whether the assessment of the loss of earning capacity is correct or not.

Heard Sri A.V.K.S. Prasad, learned counsel for the appellant/insurance company and Sri T. Kumar Babu, learned counsel for the first respondent/applicant.

It is the argument of the learned counsel for the appellant/insurance company that the lower Court erred in assessing the loss of earning capacity as 60% and it should have at best limited the loss of earning capacity to 40%, as per the medical evidence available.

On the other hand, the learned counsel for the first respondent/workman argued that percentage of disability is different from the loss of earning capacity and therefore, the finding of the lower Court was right.

The Doctor who was examined as AW.2 clearly deposed in this case that the percentage of disability is only 40%. However, he clearly deposed that the disability is permanent 'at present'. He also deposes that the workman is not able to drive any light or heavy vehicle due to the accident. In the cross-examination, he also admits that "it is true that he can do the normal work, but not driver work". The applicant did

not adduce any evidence to show that he has suffered a serious injury which incapacitates him totally from the present work or any other work also. There is no evidence to show that loss of earning capacity was much more than what is assessed by the Doctor.

It is a clear case that this is not a schedule injury. Therefore, the evidence of the Doctor is critical. The Doctor clearly deposed that the disability is only 40% but he did not say that the loss of earning capacity is 60%. No reasons are also forthcoming from the impugned order as to “why” the loss of earning capacity is assessed as 60%, particularly, when the Doctor has said that he will be able to do normal work, but not the driver work. The Doctor also did not depose and state the injury is permanent. The Commissioner should have given reasons for his conclusion that the loss of earning capacity is 60%. Reasons indicate the rationale behind the judgment. In the absence of reasons, the learned counsel was right in stating that the increase to 60% is arbitrary. This Court is also unable to understand the rationale behind the increase. Therefore, this Court is of the opinion that the lower Court was not right in increasing the loss of earning capacity to 60% when the Doctor said the percentage of the disability is 40%.

In the result, the Civil Miscellaneous Appeal is allowed with a modification that the percentage of loss of earning capacity is fixed at 40%, instead of 60%. The other issues are

not really agitated. Therefore, with this modification, the appeal is allowed and the compensation is fixed as follows:

$$\text{Rs.}2,674 \times 40/100 \times 219.95 \text{ paise} = 1,41,161.52.$$

However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

---

**D.V.S.S. SOMAYAJULU, J**

Date: 08.12.2017  
Isn

