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

C.M.A.No.440 of 2007

JUDGMENT:

This is an appeal filed against the orders dated 25.06.2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Cuddapah in W.C.No.123 of 2004.

The appellant is the insurance company which is the second respondent in the case filed before the Commissioner. The case set out in the lower Court is that the applicant sustained an injury in the course of employment and the driver of the lorry bearing No.AP36U6-1038 caused an accident. Opposite party No.1 is the owner of the lorry and Opposite party No.2 is the insurance company. In the lower Court, the injured workman was examined as a witness and Exs.A.1 to A.6 were marked. For the opposite party, a copy of insurance policy was marked as Ex.B.1. The Commissioner for Workmen's Compensation after assessing the age, salary etc. came to a conclusion that the total compensation of Rs.2,70,665/- along with stamp duty of Rs.541/- and interest at 12% is payable. Aggrieved by the said order, the present appeal is filed.

The essential point is argued by Sri Kota Subba Rao, learned standing counsel for the appellant/insurance company is that the Medical Board assessed the disability at 60% and the amputation in this case is up to the knee, therefore, it is an injury covered by Part-II, Schedule-1, item No.19 or 20. The argument of the learned counsel for the applicant is that once the statute has fixed the limit up to which, the loss of earning capacity is fixed neither this Court nor the Court below has a power to exceed the same. In this case, as per the learned counsel for the appellant, the Court below ignored the relevant item in the schedule-II and fixed the compensation contrary to the provisions of Section 4 (c) (i) of the Workmen's Compensation Act, 1923 (for short 'the Act'). The learned counsel submits that as there is an amputation below the knee, the loss of earning capacity is fixed and it cannot be depend on the whims and fancies of either the Doctors or the Tribunal below.

The learned counsel for the appellant cited judgments to this effect. The first judgment relied on ***Narayan v. Babasaheb and others***[1] wherein the Hon'ble Supreme Court of India relied upon a legal maxim, which is as follows:

> "LEGAL MAXIMS – Dulo lex sed lex – The law is hard but it is law – See, INTERPRETATION OF STATUTES – Inconvenience and hardship – To a person will not be decisive factors while interpreting statutory provision."

Therefore, it is the submission of the learned counsel that once the percentage of loss of earning capacity is fixed, there cannot be any further assessment of the same. This

[1] 2016 (3) ALD 217

argument appears to be reasonable, but a reading of the case law on the subject clearly leads to a contrary conclusion.

Pratap Narain Singh Deo v. Srinivas Sabata and Another[2] is a leading case decided by four learned Judges of the Supreme Court wherein the workman involved suffered an injury resulting in amputation of left arm below elbow. An argument was also advanced that there is no permanent total disablement and that there was only partial disablement. The Supreme Court rejected this said argument. The Supreme Court considered the definition of total disablement in Section 2 (i) (1) of the Act and came to a conclusion that total disablement means a disablement whether temporary or permanent which would incapacitate the workman for the works he was performing at the time of accident. The Supreme Court noted that the loss of arm would prevent the carpenter involved in that case from carrying out the work of carpentry and that therefore, he is not capable of doing work that he was executing prior to the accident.

In the case on hand, there is an amputation from the knee below. Therefore, it is obvious that the worker in question cannot carry out any further work as a cleaner. The Doctor in question, however, assessed the disability as 60%. Unfortunately, the Doctor is not examined as a witness. If the Doctor was examined, the basis of his assessment as 60%

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[2] AIR 1976 SC 222

disability could have been appreciated by the court below or by this Court.

Even when Doctors are examined and medical reports are marked still the report has to be considered and assessed as was held in the case of ***The United India Insurance Company Limited V. S.K. Razak and Others***[3]. The learned single Judge of this Court held that the medical reports by themselves cannot be accepted as the truth and the assessment is ultimately to be done by the Court. Again there should be positive evidence to show that the worker was totally prevented by the accident from carrying out any work including the work he was doing prior to the accident.

In the case on hand, the evidence does not show that the applicant deposed that he lost the entire earning capacity. There is no cross-examination also on the disability certificate. The evidence does not disclose that the employee in question was disabled from performing all other jobs also. In the absence of any evidence to show that the employee suffered 100% loss of income because of inability to earn a livelihood in any other profession also, this Court is of the opinion that the assessment of loss of earning capacity as100% is not correct and the same is liable to be set aside.

In addition to the above, the learned counsel for the appellant/insurance company argued that the insurance

[3] 2015(4) ALD 291

company is not liable to pay any interest and cited the judgment reported in ***P.J.Narayan v. Union of India and others***[4].

In reply, the counsel for respondent relied upon ***Samala Gangadhar v. Gangaram and another***[5] and ***Ved Prakash Garg v. Premi Devi and others***[6] and stated that interest is payable. A copy of the insurance policy is marked as Ex.B.1, it is not, however, pointed out why the insurance company is not liable to pay the interest.

In view of the latest judgment reported in ***The Oriental Insurance Company Ltd. Vs. Siby George and Others***[7], and the two judgments relied on by the respondent, wherein the Hon'ble Supreme Court held that the insurer is also liable to pay interest, this Court is of the opinion that the stand taken by the appellant/insurance company is not correct and that they are liable to pay the compensation along with the interest. However, loss of earning capacity in this case is reduced to 60%.

In the result, the Civil Miscellaneous Appeal is partially allowed and the assessment of loss of earning capacity is changed from 100% to 60%. The calculation shall be made accordingly. However, there shall be no order as to costs.

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[4] 2004 ACJ 452
[5] 2006 ACJ 385
[6] AIR 1997 SC 3854
[7] 2012(12) SCC 540

Miscellaneous Petition, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 28.11.2017
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