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

C.M.A.No.306 of 2007

JUDGMENT:

This appeal is filed by the Insurance Company against the order dated 14.02.2006 in W.C. No.56 of 2005 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Eluru.

The application was filed by the driver of the vehicle, who was injured in an accident that occurred on 18.03.2005. The first respondent is the owner of the vehicle and the second respondent is the insurance company that insured the vehicle. The applicant was examined as AW.1 and in addition, one Doctor was examined on his behalf as AW.2. Exs.A.1 to A.6 were marked for the applicant. There was no oral evidence for the respondents and only a copy of insurance policy was marked by the concerned as Ex.B.1.

The Commissioner for Workmen's Compensation after considering the evidence on record came to a conclusion that the disability is 100% and therefore, he awarded compensation of Rs.4,36,235/-. It is this order that is assailed in the present appeal.

The essential ground that is raised is that the assessment of compensation is high and that there is no proof to show that AW.1 was working on the lorry in question as a driver or that the vehicle belongs to the opposite opposite party. It is also urged that the validity of the driving licence of the driver was also an issue raised in the appeal.

Heard Sri P. Bhanu Prakash, learned counsel for the appellant/insurance company and Sri Naram Nageswara Rao, learned counsel for the applicant/first respondent.

The first and foremost point to be noted is that Ch. Prameela Devi, first opposite party is shown as the owner of the lorry bearing No.AP37W-2135. Ex.B.1-insurance policy that is filed by the respondents themselves shows that Ch. Prameeladevi is the owner of the vehicle in question. Therefore, this proves that first opposite party is the owner of the vehicle.

The accident in question occurred approximately at 4 a.m. on 18.03.2005. The FIR was lodged at 6 a.m. and the Wound Certificate also shown that the accident occurred at 6 a.m. Exs.A.1 to A.3 which are the FIR, Wound Certificate and the accident report from the Motor Vehicles Inspector show that the accident occurred as described and the vehicle No.AP37W-2135 is involved in the accident. The charge sheet, which is marked as Ex.A.4 also supports this. Therefore, it is clear that the vehicle No. AP37W-2135 was involved in the accident. The contemporaneous document made/registered soon after the accident bear the testimony to this.

The applicant also filed the disability certificate issued by the District Medical Board, West Godavari at Eluru, wherein the disability was assessed as 70%. AW.2 is a Doctor who was examined and he deposed that he along with the Chairman of the Medical Board gave the said certificate. He clearly deposed that there are fractures of both the legs and bones and that the applicant cannot operate the foot pedal as a driver as before. He denied the suggestion that the chances of improvement are not there, but he also said that he cannot become normal.

Hence, the question that survives for consideration is the assessment of damages. In the very first judgment of the Hon'ble Supreme Court of India reported in ***Pratap Narain Singh Deo v. Srinivas Sabata and Another***[1], it is held that if the worker was incapacitated from performing the duties that he was performing at the time of accident, the percentage of loss of earning capacity is 100%.

The learned counsel for the appellant/insurance company argues that the assessment of damages is high. This Court in ***N. Sree Ramulu v. B. Lakshmi Narayana***[2] held in para 26- (k) & (l), as follows:

> "(k) It is a question of fact in each case whether there is permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability.
> (l) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income."

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[1] AIR 1976 SC 222
[2] 2013 (5) ALD 249

In view of the fact that there was no positive evidence or even cross-examination by the learned counsel for the insurance company in the lower Court to the effect that the disability was not 100% and that the employee is capable of earning a livelihood in other profession, it cannot be held that the assessment of loss of earning capacity is high. If it was the case of insurance company that the disability is not severe and loss of earning capacity is not right, there should have in cross-examination on this issue or even some evidence. In the absence of any tangible evidence or cross-examination, the scaling down of compensation is not possible in this case.

For all the above reasons, the Civil Miscellaneous Appeal is dismissed and the order dated 14.02.2006 in W.C. No.56 of 2005 passed by the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour, Eluru is confirmed. 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: 23.11.2017
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