

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

C.M.A.No.482 of 2006

JUDGMENT:

This is an appeal filed by an injured workman, who is dissatisfied with the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur, dated 03.04.2006 passed in W.C. Case No.9 of 2004.

The brief facts of the case are that the applicant, S. Satyanarayana while working as a driver of first opposite party on his lorry bearing No.KA01-2579 sustained personal injuries in an accident arising out of and in the course of his employment on 15.04.2002. The applicant states that he was aged 35 years by the time of accident and was being paid Rs.3,500/- per month towards salary. The said case was filed claiming compensation of Rs.3,50,000/-.

The matter was heard, Exs.A.1 to A.9 were marked on behalf of the workman. He examined himself and also Dr. G. Varaprasad to prove the disability. The case sheet of the hospital was also summoned and marked as Ex.X.1. On behalf of the respondent No.2, copy of the insurance policy was marked as Ex.B.1.

The Commissioner after analyzing the evidence came to the conclusion that the disability is 20% and the loss of earning capacity is also 20%. He awarded compensation of

Rs.79,472/-. It is this order that is assailed in the present appeal.

It is the submission of the learned counsel for the appellant, Sri N. Subba Rao that the assessment of disability and the consequent assessment of loss of earning capacity are totally incorrect. Learned counsel for the appellant points out that the Doctor deposed that the injury was permanent and partial and that the applicant cannot drive heavy motor vehicles also. Therefore, his contention is that the assessment of loss of earning capacity should be 100%. In support of his contention, the learned counsel for the appellant/claimant relied upon Section 2 (e) of the Workmen's Compensation Act, 1923 and the judgment of the learned single Judge of this Court reported in ***N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another***¹ and he argued that the loss of earning capacity in this case is 100% and therefore, the appeal should be allowed and the assessment should be made on the basis of 100% loss of earning capacity.

In reply to this, Sri Naresh Byrapaneni, learned counsel appearing on behalf of B. Devanand, learned counsel for the second respondent/insurance company argues that the fact that there is 20% disability itself shows that the injuries are neither serious nor permanent. The learned counsel points out that AW.2-Doctor himself in the course of chief examination said that the applicant can drive light motor

¹ 2013 (5) ALD 249

vehicles and not heavy vehicles. Therefore, his argument is that there is no permanent partial disability, which has caused a loss of earning capacity in every employment that the applicant was doing or was capable of doing at that point of time. He also draws support from the last paragraph of the judgment of Hon'ble Sri Justice M.S. Ramachandra Rao reported in **N. Sree Ramulu's** case (stated supra) and highlights the fact that in the very same judgment, it is pointed out in para-25 onwards that what requires to be assessed is the activities that the workman can carry on in spite of permanent disability and the Court should assess what he could do and what he could not do in his avocation or profession.

In this case, the learned counsel for the second respondent submits that as it is an injury that is not specified in the schedule, the Doctor's evidence is crucial and according to the Doctor's evidence itself, it is proved that the applicant can drive light motor vehicles. Therefore, it is the submission of the learned counsel that there is no evidence to show that the earning capacity is reduced in every employment that he was capable of doing. Therefore, he submits that the order of the lower Court does suffer from any infirmities.

On careful perusal of the entire record and after hearing the submissions, it is clear that there is no documentary or other evidence to show that the applicant in this case has

suffered such injuries that would deprive him of livelihood in every avocation or job he could have undertaken. The evidence of the Doctor itself says that he can drive light motor vehicle not a heavy vehicle. Therefore, the assessment of disability and the consequent assessment of loss of earning capacity cannot really be faulted. In the absence of any evidence that would prove that the applicant was not in a position to do any other job and that he was totally incapacitated from obtaining any income, 100% loss of earning capacity cannot be awarded. This Court derives support for this, from the very same judgment relied upon by the appellant (**N. Sree Ramulu's** case), more so para 18 wherein it was clearly held that the loss of earning capacity has to be carefully assessed.

For all the above reasons, the Civil Miscellaneous Appeal is dismissed and the order dated 03.04.2006 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur is hereby 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: 16.11.2017
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