

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

**CMA No. 680 of 2006**

**ORDER:**

This appeal is filed against the order dated 29.09.2005 passed in WC.No.68 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner Labour, Vijayawada.

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 16W-374 belonging to opposite party No.1, driven by opposite party No.2. Opposite party No.3 is the insurer of the lorry. Stating that the said lorry met with an accident and that the applicant sustained injury, she filed the present application for compensation for the injury sustained during and in the course of employment. He prayed for compensation of Rs.3,65,487/-. The opposite parties filed their counters and denied the allegations. On behalf of the applicant, he himself was examined as a witness and the Doctor, who treated him was examined as a second witness. For the opposite parties, two witnesses were examined. For the applicant, Exs.A1 to Exs.A.10 and for the opposite parties Exs.B1 and B2 were 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.2,30,197.60 paise holding that the disability/loss of earning capacity is only 50%. Aggrieved by the said order, the present appeal is filed.

The essential ground argued is that the lower Court failed to equate the disability with the loss of earning capacity and failed to calculate the loss of disability as 70% as pleaded by him in the application.

Heard Sri V.V.L.N. Sarma, learned counsel for the appellant and Sri B.Devanand, learned counsel for the respondents.

It is the case of the applicant in his evidence that he has lost his earning capacity; that he underwent an amputation of his left knee and he became handicapped and is incapable of undertaking his avocations as a cleaner. The Doctor, who examined him was of the opinion that the percentage of disability is 70%. He stated that he issued Ex.A.5 certificate. Exs.A.4 and A.5 are the two certificates issued, which show that the percentage of disability is assessed as 70% and there is amputation below the knee. Hence, the contention of learned counsel for the appellant is that the Doctor has certified that the percentage of disability as 70% and that there is no cross-examination on the said assessment. He

stated there is nothing on record to show that the assessment of loss of earning capacity is incorrect.

It is the submission of the learned counsel for the respondent-insurance company that the assessment of loss of earning capacity is strictly as per the statute and that for the amputation below the knee, the correct percentage as fixed by the statute is 50%. Therefore, the order of the lower Court is wrong. The learned counsel for the respondent also pointed out that the witness only deposed and stated that “I am incapable of undertaking the avocation as a lorry cleaner only”. The learned counsel submits that there is no evidence to prove that the applicant was incapacitated from performing all other avocations because of this accident. Therefore, he states that the assessment is correct and there is no ground to interfere with the same.

It is a fact that the injury in question is a schedule injury and the statute itself fixes the percentage of disability.

The Doctor’s evidence would assume greater importance only if the injury is a non-scheduled injury. Even then, as per the recent law of this high Court, percentage of disability can be treated as 100% provided, there is a positive evidence to that effect. In this case, there is no evidence to show that the loss of earning capacity is 100% as urged in the grounds of appeal dated 29.12.2005. In the absence of evidence from the appellant, this Court cannot grant the same. Therefore, for

all these reasons, this Court is of the opinion that no grounds are made out to interfere with the order of the lower Court. The appeal is dismissed and the judgment and order of the lower Court is confirmed. No order as to costs.

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

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

Date: 30.11.2017  
KLP

