

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

**C.M.A.No.827 of 2006**

**JUDGMENT:**

This is an appeal filed by a workman, who is dissatisfied with the Award dated 08.02.2006 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur, in W.C.No.37 of 2004.

The applicant/appellant was the injured who was working as a driver under first opposite party. Second opposite party is insurer of the vehicle. The case of the applicant is that when he was driving the vehicle belonging to first opposite party, he met with an accident in the course of his employment on 07.02.2003. As per the averments, his leg was amputated below the knee and so he filed the claim petition for compensation of Rs.3,50,000/-.

The second opposite party denied the entire case set up, while first opposite party remained *ex parte*. On behalf of the appellant, he was examined as AW.1 and the Doctor was examined as AW.2 and Exs.A.1 to A.11 were marked. No evidence was let in nor were any documents were marked for the opposite parties.

After consideration of the evidence on record, the Commissioner came to a conclusion that the compensation payable was only Rs.1,54,184/-. The Commissioner did not consider the disability as 100% and also did not award

interest. It is for these reasons the appeal is filed challenging the order in question.

Heard Sri Josyula Bhaskara Rao, learned counsel for the appellant/applicant and Sri G. Vishweshwar Reddy, learned counsel for the second respondent/insurance company.

The two important points that are urged in the grounds of appeal and which are argued at length are about the failure of the Commissioner to consider the loss of earning capacity as 100% and the failure of the Commissioner to award interest. These are the substantial questions of law that are raised.

It is the submission of the learned counsel for the appellant/applicant that the applicant was a driver and admittedly as per the medical evidence available, his leg was amputated below the knee. Therefore, the contention of the learned counsel is that as the applicant cannot carry on his duties as a driver any longer, compensation must be awarded treating the loss of earning capacity as 100%.

On the contrary, learned counsel for the second respondent/insurance company argued that as per the provisions of Workmen's Compensation Act, 1923 (for short 'the Act') the loss of earning capacity due to amputation below the knee is only 50% (part-II schedule-I, item No.21). Therefore, the learned counsel argues that the assessment of

compensation is correctly made by the Commissioner and the same is in terms of the provisions of the Act.

There is no serious dispute about the other aspects of the assessment of compensation. The learned counsel for the appellant submitted that the statute on which both the parties are relying has fixed the percentage of loss of earning capacity, but he states that the same is the subject of judicial interpretation and therefore, he states that each case has to be decided in the facts and circumstances of the case. The learned counsel pointed out that in ***Pratap Narain Singh Deo v. Srinivas Sabata***<sup>1</sup>, four judges of the Supreme Court considered the case of a carpenter, who suffered an amputation of his left arm. In that case, the learned counsel pointed out that the Supreme Court clearly held that as per Section 2 (1)(I) of the Act, total disablement means the disablement which incapacitated of workman from doing the work that he was doing at that point of time. He pointed out that the Supreme Court upheld the finding of the Commissioner who came to the conclusion that the workman in question was disabled from doing the job that he was doing at that point of time.

The learned counsel for the appellant also pointed out that in the case of ***S. Suresh v. Oriental Insurance Company Limited and another***<sup>2</sup>, the Supreme Court clearly held that in that case as the driver's right leg was amputated below the

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<sup>1</sup> AIR 1976 SC 224 = (1976) 1 SCC 289

<sup>2</sup> (2010) 13 SCC 777

knee, he was rendered unfit from doing the work as a driver. Therefore, the Supreme Court awarded 100% loss of earning capacity. The counsel pointed out that the facts of this case are very similar to the facts of the said case. In both the cases, the drivers suffered an amputation of the leg below knee. Therefore, this Court also has to assess the loss of earning capacity as 100%.

Ex.A.11-Medical Board Certificate read with the evidence of AW.2 makes it clear that the applicant cannot drive the lorry and there is 100% loss of functional capacity. Therefore, in view of the clear and categorical judgments of the Hon'ble Supreme Court, which are the law of the land and are binding on this Court also, the arguments advanced by the learned counsel for the second respondent cannot be accepted and the loss of earning capacity is assessed as 100% based on the evidence available, in this case, in line with the judgments of the Hon'ble Supreme Court cited above.

The other point that survives for consideration is the question of interest. It was the contention of the appellant that the accident in this case occurred for the year 2003 much after the amendment to the Act and that interest should have been awarded from the date of accident onwards. The learned counsel also cited the judgment reported in ***Samala Gangadhar v. Ch. Gangaram and another***<sup>3</sup>. In this case also, the learned single Judge of this Court ordered

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<sup>3</sup> 2004 (5) ALD 84

interest from the date of accident till the date of payment @ 12% per annum. Even the judgment of **Pratap Narain Singh Deo** (1 supra), which is cited by the appellant lends support to this case that the applicant is entitled to compensation since the date the injury was caused to the applicant by the accident. Therefore, in view of the fact that the judgment in **Pratap Narain Singh Deo** (1 supra) is a judgment of four judges of the Supreme Court and following the latest judgment of the Supreme Court given in **the Oriental Insurance Company Ltd. v. Siby George and Others**<sup>4</sup>, this Court is of the opinion that the interest is payable from the date of accident till the date of realization @ 12% per annum.

Therefore, the order of the lower Court is modified to the effect that calculation of loss of earning capacity shall be “100%” and interest is payable at 12% on the sum so calculated from the date of accident till the date of realization.

With the above said findings, the appeal is allowed. 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: 29.11.2017  
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<sup>4</sup> (2012) 12 SCC 540