

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.517 OF 2005

JUDGMENT:

Heard Sri V. Sambasiva Rao, learned standing counsel for the appellant - insurer viz., M/s. United India Insurance Company Limited, and Sri Nimmagadda Satyanarayana, learned counsel for respondent No.2 - applicant, and perused the material on record.

2. The insurer - opposite party No.2 questioning the award of compensation of Rs.3,27,830/- in W.C. No.56 of 2003 by the order dated 26.05.2004, preferred the present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923.

3. The main submission made by the learned counsel for the insurer is that there has been patent mistake in determination of compensation by the authority and also taking the disability of 50% though, the disability certificate under Ex.A-6 shows the same as 40%, and even though, the medical officer, who issued Ex.A-6, or any other medical officer was not at all examined.

4. The learned counsel for respondent No.2 - applicant, on the other hand, would support the order passed by the authority. Of course, the learned counsel fairly admits that the medical officer was not examined by the applicant to prove Ex.A-6. But, however, submits that right ankle of the applicant, who was working as driver, was crushed and he has become totally incapacitated to perform his

duties as driver and, therefore, 100% loss of earning capacity ought to be computed.

5. The fact that the medical officer is not examined certainly, stares at the case of the applicant in proving percentage of disability. The examination of a medical officer in a case of this nature is absolutely indispensable. Reasons are not assigned by the applicant for non-examination of the medical officer nor did he justify non-examination of the medical officer before the authority.

6. Now, the question is whether the matter has to be remanded to the authority on this aspect or whether computation has to be made basing on the material available?

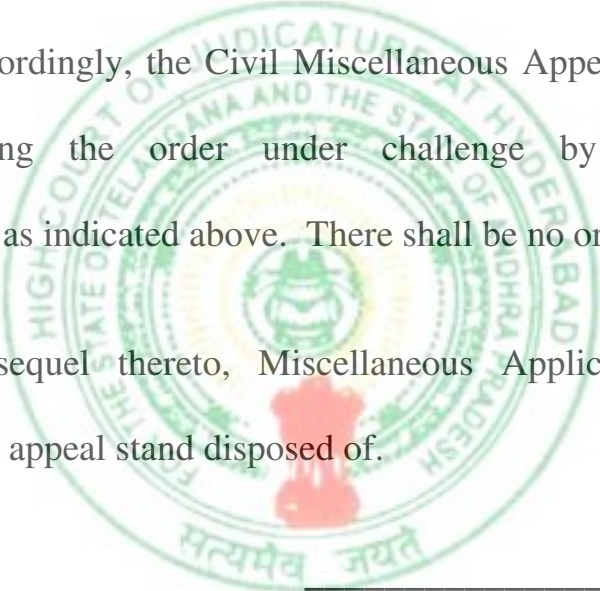
7. The order under challenge was rendered in 2004 in a case relating to 2003 and the accident relating to 2000. In fact, from the order, it appears, even the applicant moved an application in O.P. No.632 of 2001 before the learned I Additional District Judge, Eluru, under the Motor Vehicles Act, 1988, as there was reference thereto in paragraph No.3 of the order under challenge at page No.3, where, AW.1 (applicant) denied the suggestions made by the learned standing counsel for the insurer. The earnings at Rs.3,070/- taken by the authority is not disputed by the learned standing counsel for the insurer so also the age factor at 213.57. But, the dispute is in relation to the authority working out compensation by applying the wages at 50% as well as 40% disability instead of taking 50% disability.

Therefore, when the same is corrected, the loss of earning capacity or the quantum of compensation payable to the applicant would workout to Rs.1,57,358/- (age factor 213.57 x Rs.3,070 x 60 / 100 [60% of wages] x 40% disability).

8. Thus, the applicant is entitled to a sum of Rs.1,57,358/- (Rupees one lakh fifty seven thousand and three hundred and fifty eight only) towards compensation as against Rs.3,27,899/- awarded by the learned authority and the same is accordingly awarded.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge by reducing the compensation as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.



A. SHANKAR NARAYANA, J

August 17, 2017.

PV