

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

C.M.A.No.685 of 2006

JUDGMENT:

This is an appeal filed by an injured workman who is aggrieved by the order dated 16.05.2006 in W.C. Case No.95 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada.

The case of the applicant is that he sustained injuries while he was employed as a cleaner on the lorry bearing No.AP16W-7745 owned by first opposite party. Second opposite party is the Insurance Company.

The Commissioner after the trial came to the conclusion that the loss of earning capacity is 70% based on the certificate of AW.2, the Doctor, who is stated that the disability is 70%. It is this finding of equating disability to earning capacity that is questioned in this appeal.

Heard Sri N. Subba Rao, learned counsel for the appellant and Sri Srinivasa Rao Vutla, learned standing counsel for the second respondent/insurance company.

The learned counsel placed strong reliance on the evidence of AW.1 who clearly stated in para-3 of his chief-examination that he has lost his capacity to earn money that he is unable to do any work and even unable to do his own personal work. In the cross-examination, nothing was elicited about loss of earning capacity nor was any question put to

him that he is not in a position even to do his personal works. In the re-examination, he goes on to depose that he has no sensation of passage of urine and motion and that he cannot move without assistance of others, as his lower limbs were paralyzed. Again there was no cross-examination on this aspect. In addition, one Dr. K. Kranthi Kishore was examined as AW.2. He is a Doctor who deposed that the applicant is not able to move both lower limbs and he has no sensation in the lower limbs. In addition, the applicant suffered from incontinence of urine and stools. Surgery was done for spinal cord injury of the applicant and even in the post-operative period, there is no improvement in the power of lower limbs. The Doctor also deposed that continence of the bowel and bladder did not stop. In addition, this Doctor deposed clearly that the injured cannot have improvement in future and that the applicant cannot move without the support of others. In the cross-examination, which is perfunctory, only a suggestion was put to the Doctor. Nothing was elicited to discredit his testimony. The disability certificate also shows the percentage of disability is 70%, whereas AW.2 said that it is between 50 to 70%.

It is the submission of the learned counsel for the appellant, Sri N. Subba Rao that in a case, like this, the percentage of disability cannot be equated to the percentage of loss of earning capacity.

In response to this, the counsel for the second respondent submits that the order in question is a reasoned order and correct, although it is cryptic.

As has been held in many cases starting from ***Pratap Narain Singh Deo v. Srinivas Sabata and another***¹ and followed in a large number of cases, if it is found that in view of the injury sustained, the injured is unable to do a job, he was doing earlier and is also unfit for other employment/affairs, then the liability will have to be assessed carefully and the loss of earning capacity is at 100%.

In the case on hand, medical evidence is clear to the effect that the injured workman is paralyzed as he lost the sensation/function of his lower limbs. Despite the surgery performed, there is no improvement in his position. The incontinence of the bowel and bladder is not working and urine is continuing. He is unable to move without the assistance of others. The medical record is also filed before this Court.

In view of all the above and after considering the oral and documentary evidence in this case, it is clear that the injured workman has lost his earning capacity. The Commissioner erred in holding that the loss of earning capacity is only 70%. He ought to have held that the loss of earning capacity is 100%.

¹ AIR 1976 SC 222

In the result, following ***N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana and another***², the compensation shall be assessed and paid to the appellant on the basis of the loss of earning capacity is 100% and accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order dated 16.05.2006 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 17.11.2017
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D.V.S.S. SOMAYAJULU, J



² 2013 (5) ALD 249