

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

C.M.A.No.978 of 2006

JUDGMENT:

This is an appeal filed by an injured workman aggrieved by the orders dated 14.03.2006 passed in WC Case No.2 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur.

The brief facts of the case are that the applicant sustained an injury arising out of and in the course of employment. He was employed as a driver of auto rickshaw bearing No.AP7X 3030 belonging to first opposite party and insured with second opposite party. The claim was lodged as the accident occurred during the course of employment and total compensation of Rs.2,50,000/- was claimed against opposite parties 1 & 2.

Second opposite party filed a counter denying the allegations. The parties went to trial and on the applicant side, AW.1 was examined and the Doctor, who treated the injured, was examined as AW.2. Exs.A.1 to A.6 were marked. On behalf of second Opposite Party, one witness was examined as RW.1 and Ex.B.1 to B.4 were marked.

During the course of evidence of AW.2, he deposed that the applicant was having 30% disability. The learned Commissioner for Workmen's Compensation in his impugned order held that loss of earning capacity is also 30%. Consequently, he assessed the compensation due to the

injury and passed an award for Rs.1,15,119/-. This order is assailed in the present appeal.

Heard Sri A. Rajendra Babu, learned counsel for the appellant and Sri K. Madhava Reddy/Smt. Ramani Jonna, learned counsel for the respondents.

The essential point that is raised in this appeal and submitted before this court is that the lower Court erred in fixing the loss of earning capacity as 30% and should have assessed the same as 100%. This is essential point raised. The learned counsel for the second respondent opposed the same and stated that there is no infirmity in the impugned order.

The available evidence in this case does not show that the disability was assessed by a Medical Board. After considering the oral and documentary evidence and after hearing the submissions of the learned counsels, this Court is of the opinion that there is no medical evidence or other evidence to prove that the applicant had in fact lost his capacity to work in this employment and in any other employment, he was capable of getting at that point of time. Loss of earning capacity is a matter of evidence. The applicant was under an obligation to prove that because of his injury, he was prevented from discharging of his duties and that because of this injury, he also became unemployable in every other avocation or profession. This sort of evidence is missing in this case. It is also proved that there is no assessment by

a Medical Board. Ex.A.4 certificate also does not state anything about percentage of disability. Only in the oral evidence, the Doctor has spoken about the percentage of disability. Therefore, the learned counsel is right in submitting that there is no reliable evidence to show that the assessment by the lower Court was wrong. This Court agrees with the submission made by the learned counsel for the second respondent. The evidence in this case does not prove that the applicant sustained 100% loss of earning capacity. The Commissioner in fact liberally assessed the compensation. No grounds are made out or urged during the course of hearing to modify, alter or set aside the findings in the impugned order.

For all the above reasons, the Civil Miscellaneous Appeal is dismissed and the impugned order dated 14.03.2006 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1 Circle, Guntur, is affirmed. 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: 17.11.2017
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