

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

CMA No. 866 of 2007

ORDER:

This is an appeal filed against the order dated 28.05.2007 in WC.No.4 of 2005 by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur.

The applicant is the workman, who was injured in the accident. The case of the applicant is that he was working as Driver on the lorry bearing No.AP 16U 6985 belonging to opposite party No.1. Opposite party No.2 is the insurer of the lorry. Stating that the said lorry met with an accident and that the applicant sustained injury, he filed the present application for compensation for the injury sustained during and in the course of employment. He prayed for compensation of Rs.3,00,000/-. The opposite party No.2 filed counter denying the allegations and the claim. On behalf of the applicant, he himself was examined as AW.1 and the Doctor, who treated him was examined as a second witness-AW.2 and one Sri Uppala Raju was examined as AW.3 and Exs.A1 to Exs.A.10 and Ex.X.1 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.1,01,246/- by both the opposite parties 1

and 2 jointly and severally. Aggrieved by the said order, the present appeal is filed.

Heard Sri N.Subba Rao, learned counsel for the appellant and though served none appeared for the respondents.

The essential ground urged by the appellant in this appeal is that the assessment of loss of earning capacity is wrong. As per the learned counsel for the appellant the Commissioner erred in fixing the loss of earning capacity only at 25%.

On the other hand, a perusal of the record shows that there is no material on record to show that the loss of earning capacity is much higher. It is clear that in the evidence of AW.1, he did not say that he has lost his job as a Driver and was also not fit for any other employment. Similarly, AW.2, the Doctor also did not depose that the applicant was not fit for any other employment. He only assessed the disability at 20 to 25%. The cross-examination does not in any way say that the assessment is wrong etc. AW.3, who is the cleaner of the lorry did not depose about the loss of earning capacity. He deposed in Court more than one year after the accident but did not speak anything about the loss of earning capacity at all. Section 4 (c) (ii) of the Workmen's Compensation Act, 1923 states that a Doctor, while assessing the loss of earning capacity should ensure it is proportional to the injury caused

as defined in the Act itself. This is the plain language of the statute itself and so this Court cannot ignore the same.

Without a foundation in the pleading or in the evidence the loss of earning capacity cannot be enhanced or increased as prayed for. Therefore, this Court is of the opinion that the impugned order of the Commissioner does not suffer from any defect or flaw.

The appeal is, therefore, dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 08.12.2017
KLP

