

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

CMA No. 867 of 2007

JUDGMENT :

This is an appeal filed against the order dated 29.05.2007 in WC.No.34 of 2005 passed 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 a cleaner on the lorry bearing No.AC 4678 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 was aged about 24 years and was getting wages of Rs.2,000/- per month by the date of accident; he filed the present application for compensation for the injury sustained during and in the course of employment. He prayed for compensation of Rs.2,00,000/-. Second opposite party filed his counter denying the averments and the claim as the compensation claimed by the applicant is high and without any basis.

On behalf of the applicant, he himself was examined as a witness-AW.1 and the Doctor, who treated him was examined as a second witness-AW.2 and first opposite party was examined as AW.3. For the applicant, Exs.A1 to Exs.A.12 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.1,18,683/- 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 none appeared for the respondents.

The learned counsel for the appellant argued that the assessment of loss of earning capacity is wrong and that the Commissioner blindly relied on the doctor's assessment of disability. He states that the loss of earning capacity cannot be equated to the percentage of disability. The submission is that the loss of earning capacity is 100% and therefore, the order of the Commissioner should be revised.

The crucial evidence is of the doctor in this case, who was examined as AW.2. The injury in question is a non-scheduled injury. Therefore, a duty is cast upon the doctor to assess the loss of earning capacity as per Section 4 (2) (c) (ii) and explanation-II of the Workmen's Compensation Act. The doctor in this case found that there is a loss of function of the left elbow joint and so he assessed the loss of earning capacity as 40%. There is also the presence of infection and pus which was found in the year 2006 which is about two years after the accident. Therefore, the presence of intervening precipitating factors like lack of care by the

patient etc., cannot be ruled out. The doctor admits that he does not remember if the patient came for follow up and that the wound contamination led to the deteriorating condition of the patient.

In view of this clear evidence and the fact that in the cross-examination of this medical witness; nothing critical was elicited leads to the conclusion that the percentage was correctly assessed by the doctor. Nothing was pointed out to discredit the testimony of this medical witness. This Court is of the opinion that the order of the Commissioner is correct and valid. No grounds are made out to modify or reverse the findings.

Hence, the appeal is dismissed confirming the order of the Commissioner dated 29.05.2007. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 14.12.2017
KLP