

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

CMA No. 136 of 2006

ORDER:

This is an appeal filed against the order dated 16.08.2005 passed in WC.No.12 of 2004 by the Commissioner for Workmen's Compensation, Labour-1, Circle, Guntur.

The brief facts of the case are that the applicant/appellant was involved in an accident on lorry bearing No. AP 7T 4349 on 15.01.2004. As he was employed by opposite party No.1, the application was filed under the Workmen's Compensation Act, 1923 (for short 'the Act') claiming compensation for the injuries sustained during the course of employment. Opposite party No.2 is the insurer of the vehicle. The Commissioner for Workmen's Compensation examined the applicant as AW.1 and the Doctor as AW.2. For the opposite parties, one witness was examined. On behalf of the applicant, Exs.A.1 to A.16 were marked. For the respondent, Ex.B.1 was marked. The Commissioner, after going through the record, held that the applicant was working with the opposite party No.1 and that it is an accident that occurred during the course of employment. The age was fixed on the basis of the driving licence and other records. Since the wages are not proved, the Commissioner relied upon minimum wages that are payable as per the relevant notification. However, when it came to compensation, the

Commissioner felt and assessed the physical disability as 20%, while as per the Doctor, the loss of earning capacity is 35%. Therefore, the Commissioner awarded total compensation of Rs.1,57,004/-. This is assailed by the workmen in the present appeal.

Heard Sri A.Rajendra Babu, learned counsel for the appellant and none appeared for the respondents.

The only question that is argued in the appeal is about the loss of earning capacity. It is the contention of the appellant that 100 % of loss of earning capacity should have been awarded.

On the other hand, the learned counsel for the respondent argued that the assessment of loss of earning capacity is high and according him, the disability is only 20% and therefore, the assessment by the qualified medical practitioner is important. He also draws the attention of the Court to Section 4(1) (c) (ii), Explanation-II of the Act and states that the qualified practitioner shall have due regard to the percentage of losses described in Schedule-I. He states, the Act itself fixes the methodology for assessment.

There is no evidence placed on behalf of the appellant to contend that he is totally disabled from doing his job or all other jobs possible. On the contrary, the Doctor, who was examined as AW.2 said that there is 20% disability with reference to the lower limb. He also said that there will be some difficulty for walking and to drive vehicles. In the

absence of any such evidence of total loss of earning capacity, this Court cannot assess or come to a conclusion that the loss of earning capacity is 100 %.

In the case on hand, the lower Court took a liberal view and assessed the compensation as 35%. This Court is of the view that this assessment itself is liberal. As held by the Supreme Court and other Courts in various decisions, a liberal interpretation should be given to the provisions of the Act, but by any yardstick in view of the medical assessment in this case; the loss of earning capacity cannot be 100%. Therefore, this Court is of the opinion that there are no merits in the appeal.

In the result, the appeal is 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: 28.11.2017
KLP