

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

CMA No.226 of 2006

ORDER:

This is an appeal filed by the injured workmen challenging the orders dated 03.11.2005 in WC.No.33 of 2004 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour.II Circle, Guntur.

The application is filed by one Kakkerla Bikshapathi. He states that he sustained injuries arising out of and in the course of employment while he was working on a lorry bearing No.AP 16U 799. The said injury is supposed to have occurred on 22/23.05.2004. Opposite party No.1 is the owner of the lorry, opposite party No.2 is the Insurance Company and opposite party No.3 is the policy holder of the above said lorry. Opposite parties 1 to 3 denied most of the averments made in the application and opposed the claim.

The Commissioner for Workmen's Compensation, Guntur, after noticing the evidence on record, came to the conclusion that there was an employer/employee relationship. The age was also determined as 40 years on the basis of the age mentioned in Driving Licence of the injured workmen. The minimum wages were adopted with reference to GO.Ms.No.30 dated 27.07.2000. Based on all the above, the Commissioner came to a conclusion that the compensation payable is Rs.1,25,361/-. He directed the

same should be paid by opposite parties 1, 2 and 3. It is this order that is assailed in the appeal.

Heard learned counsel Sri A.Rajendra Babu for the appellant and Smt. A.Jayanthi for the respondents.

The essential issue that is argued by the learned counsel for the appellant is that the assessment of loss of earning capacity is not correct and that the lower Court should have said that the loss of earning capacity is 100%.

In this case, the evidence of AW.2-Doctor, who deposed before the Court clearly shows that the injuries are general injuries along with fracture of the thigh bone. Therefore, the disability is assessed as 30%. In the cross-examination, he states that except right femur portion, all other injuries are simple in nature. The Doctor does not say why the worker in question is unable to function as a lorry driver or in any other manner. The workmen did not introduced any evidence to show that he was totally disabled and that he has no chance to carry on any other employment also.

Cases of amputation of leg wherein the Hon'ble Supreme Court of India assessed the loss of earning capacity as 100%, cannot be equated to cases like this, where there is a fracture; there is no amputation and there are no grievous injuries along with the fracture. Therefore, this Court does not find anything wrong with the assessment of loss of earning capacity.

As per the judgments reported in **N.Sree Ramulu @ Sree Rama Murethy v. B.Lakshmi Narayana and another¹**, **Nakka Rambabu Vs. O. Akka Rao²**, and **National Insurance Company Limited, Ananthapur v. D.Sivasankar and another³**, loss of earning capacity is a matter of evidence and it cannot be presumed to be 100% in all cases, particularly when the injuries are non scheduled injuries. These are matters of evidence. The disability; the failure to get alternate employment etc., are matters of evidence. Such evidence is lacking in this case.

For these reasons, this Court is of the opinion that the order of the lower Court/Commissioner does not suffer from any serious infirmities and the same is confirmed.

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:15.11.2017
KLP

¹ 2013 (5) ALD 249

² 2015 ALD (4) 50

³ 2006 (4) ALD 398