

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

CMA No.634 of 2006

ORDER:

This appeal is filed by the injured workman dissatisfied with the order dated 07.11.2001 in WC.No.49 of 2001 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Guntur.

A perusal of the record of the lower Court reveals that the application was filed seeking compensation of Rs. 3,00,000/- for an injury arising out of and in the course of employment. On behalf of the applicant, Exs.A.1 to A.15 were marked. The applicant himself was examined as a witness and the Doctor, who treated him was examined as AW.2.

The Commissioner, after examining the case in detail, held in favour of the applicant and felt that the disability, which is estimated at 20% caused a loss of earning capacity of 35%. It is this finding that is assailed in the appeal. The learned counsel for appellant argued that his client is permanently disabled and hence is entitled to full compensation.

Heard Sri A.Rajendra Babu, learned counsel for the appellant and Sri Meharchand Nori for respondent No.2.

The short and simple question urged is that the assessment of loss of earning capacity by the lower Court is bad and the same should be enhanced to 100%.

A perusal of the record shows that the Doctor, who was examined as AW.2 felt that the disability was only 20%. The injuries sustained in this case are fracture to the right collarbone and some injuries on the chest. The Doctor noticed that the said collarbone fracture was not fully united. He stated that he will not be able to drive a vehicle in future, but assessed the disability at 20%. There is no other evidence to the contrary in this case to disbelieve that the assessment of disability is wrong. Therefore, this Court is of the opinion that the assessment of disability cannot be faulted. But, the learned counsel argued that loss of earning capacity is not the same as percentage of disability and that the Commissioner has erred in not awarding 100% as loss of earning capacity.

While, it is true that percentage of disability cannot be equated to loss of earning capacity, it is also necessary that some evidence should be available before the lower Court to show that the worker was disabled and prevented there by doing all other works that he was capable of doing at the time of accident. Para 22 of the judgment reported in ***The United India Insurance Company Limited V. S.K. Razak and Others***¹ and para 25(h) and 25(k) of the judgment reported in ***N. Sree Ramulu and Others V. B. Lakshmi Narayana (died) and Others***² are very relevant.

¹ 2015 (4) ALD 291

² 2013 (5) ALD 249

In the case on hand, there is no evidence to show that the appellant was incapacitated totally from carrying out his employment or any other employment that he was capable of doing at the time of the accident.

In view of the law on the subject and the fact that there is no evidence to the contrary, this Court is of the opinion that the Commissioner for Workmen's Compensation has correctly assessed the loss of earning capacity as 35% and that there are no grounds to interfere with the same. No grounds are made out to modify, alter or set aside the findings of the lower Court.

For these reasons, 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: 17.11.2017
KLP