

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

CIVIL MISCELLANEOUS APPEAL No.452 of 2007

JUDGMENT

This appeal is filed by the appellant/applicant against the orders dated 24.4.2007 in W.C.No.132 of 2004 on the file of the Commission for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

Brief facts of the case are that the applicant was working as driver to the Car bearing No.AIH-1094 belonging to opposite party no.1. The said car was insured with opposite party no.2. As per averments of the complaint, when the vehicle was driven by the applicant on 20.5.2004, an accident occurred, as a result of which the applicant sustained injuries including fractures. As the accident occurred in the course of employment, the application is filed against opposite party nos.1 and 2 claiming compensation of Rs.3,00,000/- and interest thereon.

Opposite party no.1 remained ex parte and opposite party no.2 denied allegations that are made in the application. For the applicant, he himself was examined as a witness-PW.1 and the doctor who treated him was examined as PW.2. Exhibits A1 to A7 were marked for the complainant. On behalf of the opposite parties, no oral evidence was adduced but a copy of the insurance policy was marked as

Ex.B1. After considering the evidence on record, the Commissioner ordered opposite parties 1 and 2 to pay the compensation of Rs.1,55,111/-.

It is this order that is assailed in the appeal.

Heard Sri M.Rajamalla Reddy for the appellant and Sri E.Venu Gopal Reddy for the Respondent No.2.

Learned counsel for the appellant/applicant argued that the lower court was wrong in assessing the loss of earning capacity. According to him, the doctor who was examined as PW.2 assessed the loss of earning capacity as 70% but the Commissioner for Workmen's Compensation assessed the loss of earning capacity as 55% only. The appellant/applicant is aggrieved by this reduction and prays that the loss of earning capacity should in-fact be assessed as 100%. The second point urged is that interest was not granted despite a prayer for the same and no reasons are also given as to why interest was not awarded. Learned counsel for the respondent no.2, on the other hand, argued that since notice was not given to the insurance company of the accident, interest need not be paid.

After considering the record that is available in this case, it is clear that the doctor who was examined on behalf of the appellant-applicant states that due to grievous injuries that the appellant/applicant has sustained, he is having 35% permanent disability. Due to the above injuries, the appellant-applicant is unable to drive the vehicle as

previously. In the cross examination, however, he states that the appellant/applicant has lost his earning capacity upto 70% (manual labour). He again agrees in his further cross examination that the appellant/applicant can do sedentary job (sitting). In the evidence of PW.1 also, there is nothing to show that he is totally disabled and that due to said functional disability, the loss of earning capacity is 100%.

No foundation is laid for grant of compensation of 100% either in the pleadings or in the evidence. This Court cannot order compensation as prayed for by the learned counsel. There should be a legal and factual foundation for the said plea. The doctor's evidence is also found to be trustworthy. There is nothing on record to suggest that the doctor's assessment of physical disability is wrong. In the absence of any evidence, this Court is of the opinion that the Commissioner has in-fact taken a liberal view and granted compensation while assessing the earning capacity as 55% instead of 70%. This part of the order is, therefore, correct.

As far as second submission is concerned, no reasons are forth coming from the order as to why interest has not been granted. After the decision of the Hon'ble Supreme Court of India in ***Ved Prakash Garg v. Premi Devi and others***¹, it is clear that interest is payable in all cases. Even the amendment to the Workmen's Compensation Act makes it clear. Despite the prayer being made in the application, the

¹ AIR 1997 SC 3854

Commissioner did not award the same. In the application filed, the prayer is for awarding of Rs.3,00,000/- with interest at 12% per annum. But, in the evidence affidavit of PW.1 himself, the prayer is for compensation of Rs.2,00,000/- with interest at 24% (para 6 of the affidavit in chief). There is an obvious error here. However, in the interest of justice this Court feels that the appellant-applicant is entitled to interest at 6% per annum from the date of the accident till the date of actual payment. The latest judgment of the Supreme Court of India in the case of **The Oriental Insurance Company Ltd., v.Siby George and others**² also supports this view for granting interest.

Therefore, the appeal is allowed in part granting interest at the rate of 6% per annum from the date of accident till the date of actual payment. Rest of the appeal is dismissed. No order as to costs.

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

JUSTICE D.V.S.S.SOMAYAJULU

Date: /12/2017

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² 2012 (12) SCC 540

