

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2235 OF 2004

JUDGMENT:

Challenge is to the order, dated 13.11.2003, passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur (for short 'Commissioner') in W.C. Case No.84 of 2002 under Section 30 of the Workmen's Compensation Act, 1923 (for short 'Act'), by the applicant on the ground that fixation of loss of earning capacity at 40% in view of the finding that the workman cannot work due to deformity of leg and he is not entitled for the estimation of loss of earning capacity at 100% as observed by the Commissioner is without any merit and, therefore, sought to treat the loss of earning capacity as 100% as deposed by the doctor.

2. The appellant herein is the applicant in the aforesaid W.C. Case, while respondent Nos.1 and 2, who are owner/employer and insurer of lorry bearing registration No.AP 09U 6138, are opposite party Nos.1 and 2 respectively.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid W.C. Case.

4. The relevant facts are that the applicant was working as a Cleaner on lorry bearing registration No.AP 09U 6138 belonging to opposite party No.1 and insured with opposite party No.2. He

received injuries during the course of employment on 23.03.2002 at Peda Outupal Centre, when a lorry coming in opposite direction hit him. A case was registered in Crime No.56 of 2002 by the Station House Officer, Unguturu Police Station. Claiming that he was 24 years old, earning Rs.3,000/- per month as wage on the date of accident, sought award of Rs.5,00,000/- as compensation against opposite party Nos.1 and 2.

5. The Commissioner framed three issues. Before him, the applicant and the doctor, who treated him, were examined as AWs.1 and 2 and marked Exs.AA-1 to A-8. On behalf of opposite parties, none were examined and no documents were filed.

6. The Commissioner referring to the percentage of disability, observing the arch of the foot was not being maintained because the applicant lost the metatarsal bones, and there was no possible treatment for correction of foot as normal to any considerable extent, as it was exactly a crush injury and there was no any perfect treatment externally except providing artificial limb as opined by the Medical Officer, somehow, opined that 40% loss of earning capacity would meet the ends of justice, and thereby assessed the compensation and arrived at Rs.98,102/-, besides stamp duty of Rs.197/-, totaling Rs.98,299/-.

7. The aforesaid finding recorded by the Commissioner has been directly under challenge in the present appeal. To answer the

same, the learned counsel for the applicant would submit that the petitioner being a cleaner and since there is deformity to his foot due to crush injury and except providing artificial foot, there is no other alternative, as opined by the doctor, the disability ought to have been considered as 100% but not as 40% and discretion exercised by the Commissioner is arbitrary and not judicious, and he placed reliance in **Pasupuleti Ramarao v. Pothinaboina Durgarao and another**¹. A learned single Judge of this Court in almost alike situation where cleaner in a lorry sustained injuries on left leg and left great toe resulting in being unable to perform his duties as a cleaner, opined that loss of earning capacity has to be arrived at 100% and compensation be awarded accordingly. The learned Single Judge also placed reliance in **National Insurance Company Limited v. Mohd. Saleem Khan**², **Pratap Narain Singh Deo v. Shrinivas Sabata**³ and **Punambhai Khodabhai Parmar v. G. Kenel Constructions**⁴. The learned counsel also placed reliance on yet another decision rendered by the Hon'ble Supreme Court in **Pratap Narain Singh Deo**³, which was relied on by the learned Single Judge of this Court in **Pasupuleti Ramarao**¹. The fact-situation would show that there was personal injury to carpenter in the course of employment and there was amputation of left hand above elbow and opined that the carpenter cannot work with one hand and the disablement is total and not partial.

¹. 2000 (2) ALD 752

². 1991 (3) ALT 504

³. 1976 ACJ 141

⁴. 1984 ACJ 739

8. The fact-situation occurring in the present case is akin to the one occurring in **Pasupuleti Ramarao**¹. In fact, in the present case, the left foot was completely crushed and there is no alternative except an artificial foot being implanted. In such an event, certainly, the percentage of disability or loss of earning capacity fixed at 40% by the Commissioner appears to be arbitrary and since disablement has to be viewed as 100% and the loss of earning capacity has to be worked out basing on 100% permanent disability keeping in view the profession of the applicant working as a cleaner.

9. No doubt, the learned standing counsel for the Insurer - opposite party No.2 contended that the applicant can choose alternative profession by sitting and conducting some business, but that cannot be a ground to disallow the 100% disability, as what is required under the Act is, whether the profession, which he was hitherto used to conduct, is able to conduct in future in view of the injuries sustained by the injured/workman and any permanent disability he suffered. Therefore, rejecting the submission of the learned standing counsel for the Insurer, loss of earning capacity at 100% is allowed. The total wage of the applicant taken by the Tribunal is Rs.1871/-. As per Schedule IV under the Act, the relevant age factor of the applicant is 218.47 as he is aged 24 years. For 100% disability, the compensation would work out to Rs.2,45,342/- [Rs.1871 x 60/100 x 218.47 x 100%], to which the applicant is

entitled. The stamp duty of Rs.197/- awarded by the Commissioner is confirmed. Thus, in all, the applicant is entitled to Rs.2,45,539/-.

10 In the result, the appeal is allowed in part, and the order, dated 13-11-2003, in W.C. Case No.84 of 2002, passed by the Commissioner is modified, enhancing the compensation to Rs.2,45,539/- (Rupees two lakhs forty five thousand five hundred and thirty nine) from Rs.98,299/- with interest at 12% per annum thereon from the date of occurrence till date of deposit, and in all other respects, the order is confirmed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

September 15, 2017
Mgr

A. SHANKAR NARAYANA, J

