

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

CMA No. 442 of 2005

ORDER:

This is an appeal filed against the order dated 31.01.2005 in WC.No.1 of 2004 by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour-II, Circle, Guntur.

The applicant is the workman, who was injured in an accident. The case of the applicant is that he was working as a Driver on the lorry bearing No.ABK 22053 belonging to opposite party No.1. Opposite party No.2 is the insurance company. Stating that the said lorry met with an accident and that the applicant sustained injury, he filed the present application for compensation for the injury sustained during and in the course of employment and prayed for compensation. The opposite parties filed their counters and denied the allegations. On behalf of the applicant, he himself was examined as AW.1 and the Doctor, who treated him was examined as AW.2. Exs.A1 to Exs.A.10 and Ex.X.1 were marked as documents. After considering the documentary and oral evidence, the Commissioner for Workmen's Compensation passed the impugned order, wherein he directed payment of compensation of Rs.65,453/- by both the opposite parties 1 and 2 jointly and severally. Aggrieved by the said order, the present appeal is filed.

Heard Sri N.Subba Rao, learned counsel for the appellant and Sri S.N.Padmini, learned counsel for the respondents.

The essential ground urged by the learned counsel for the appellant is that the assessment of damages by the Commissioner is not correct and that there is a permanent partial disablement. Therefore, the counsel states that the percentage of loss of earning capacity should be granted as prayed for in the application itself.

On the contrary, the counsel for the respondents points out that the assessment of earning capacity is based upon a percentage of physical disability assessed by a Doctor. Therefore, the learned counsel submits that the finding should not be interfered with.

Having heard both the counsels, it is clear that AW.2 was the Doctor, who has assessed the disability in this case and has deposed in Court is the critical witness to decide this issue. The medical record was also summoned and the same was marked as an exhibit. There is no dispute about the facts. The Doctor clearly deposed that the percentage of disability is only 15%. On an examination of the applicant in the Court, he found that there is a mild restriction of left ankle and tenderness. The Doctor in question clearly stated that the patient may face some difficulty in driving heavy vehicle, long distance. In the cross-examination, he also states that the applicant can attend to his driving duties also.

The cross-examination of the Doctor reveals that a suggestion was put to him stating that the assessment of damages was excessive also but the same was denied.

The applicant No.1 is now seeking for re-assessment of this evidence and for awarding higher compensation. There is no material available on record to justify the claim made in the appeal. There is no effective cross-examination of the Doctor. The cross-examination does not suggest that the assessment of the damages was wrong or that the injuries have prevented the applicant in question from doing any other job. In fact the evidence points out to the fact that he can continue to work as a Driver also. This Court is, therefore, of the firm opinion that the medical evidence is clear in this case. No case is made out to ignore the evidence of this medical practitioner.

For all these reasons, this Court feels that there are no grounds made out to interfere in this case. The order passed by the lower court is, therefore, 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: 12.12.2017
KLP