

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.918 OF 2007

JUDGMENT:

Opposite party No.2 is the present appellant.

Challenging the order dated 12.09.2007 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour at Mahabubnagar granting Rs.1,34,168/- as compensation for the injuries sustained by respondent No.1-applicant during the course of employment under respondent No.2-Opposite Party No.1 and sustained malunited fracture of left leg with shortening and post traumatic knee stiffness of right leg, the present Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923.

2. Heard Sri K. Madhusudhan Reddy, learned Standing counsel for the appellant and Sri C. Buchi Reddy, learned counsel for respondent No.1-applicant.

3. Learned Standing Counsel for the appellant would submit that the Commissioner, despite observing that the applicant as A.W.1 admitted that he has not filed any medical bills, prescription of the Doctor, still, assessed the loss of earning capacity at 50%, while Doctor's certificate shows he suffered 25% disability on account of post traumatic knee stiffness of right leg and there is legal infirmity in

the order passed by the Commissioner, and, therefore, it is liable to be set aside.

4. It is also his submission that the disability certificate marked through A.W.2 is of any consequence, as A.W.2 has admitted that he did not treat A.W.1, and, therefore, the Commissioner ought not to have awarded the compensation.

5. Per *contra*, learned counsel for respondent No.1 supports the order passed by the Commissioner contending that the Commissioner convinced with the evidence on record, more particularly, the evidence of Doctor, examined as A.W.2, and observed that A.W.2 is competent Doctor and certified that the applicant has suffered 25% physical disability and the applicant will have difficulty for walking, sitting and squatting and the applicant will not be able to do any hard work and shortening of leg is sufficient to arrive the loss of earning capacity at 50%.

6. Perused the order under challenge.

7. It is no doubt true that medical certificates have not been filed, but the medical report marked as Ex.A4 and Ex.A5-original Disability Certificate and even Discharge Card issued by Gandhi Hospital marked as Ex.A7. In the presence of these documents, more particularly, Exs.A4 and A7, it cannot be said that no documents relating to treatment undergone by the applicant were filed.

8. Now, turning to the evidence of A.W.2, the submission that since the disability was only 25%, loss of earning capacity ought to have considered by the Commissioner at 25%, but not at 50%. It is clear that when there is shortening of right leg and internal nailing for both sides to the leg was visible and the applicant cannot discharge his duties as cleaner of the lorry, assessing the loss of earning capacity at 50% cannot be held as legally infirm.

9. Therefore, there is absolutely no patent illegality warranting interference with the award of compensation by the Commissioner.

10. There is no merit in the present Civil Miscellaneous Appeal, and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 14.06.2018

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