

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

C.M.A.No.1035 of 2007

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company Limited against the order dated 22.01.2007 in W.C. Case No.112 of 2005 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nalgonda.

The case before the Commissioner is filed by the driver of the lorry bearing No.AP-21-U-2849 belonging to the first opposite party (OP-1). The same was insured with second opposite party (OP-2). The case of the applicant before the Commissioner is that while he was driving the lorry No.AP21-U-2849 it met with an accident on 06.02.2004 due to another lorry hitting the same at high speed. The applicant states that he sustained injuries which are described in the application. Therefore, he filed the WC case claiming compensation of Rs.4,00,000/- for causing accident.

OP-1 chose to remain *ex parte*. OP-2 filed a counter denying the entire case. After the pleadings were completed, for the applicant, he was examined as PW.1 and the Doctor, who gave Ex.A.5-disability certificate, was examined as AW.2. For the opposite parties, no oral evidence was let in, but a copy of the insurance policy was taken on record as Ex.B.1.

After considering the oral and documentary evidence, the Commissioner came to a conclusion that compensation of

Rs.2,89,612/- is payable. It is this order that is now assailed in the present appeal.

This Court has heard Sri Naresh Byarapaneni, learned counsel for the appellant/insurance company. There is no representation for the respondents.

The essential issue on which the appeal was argued was about the assessment of the disability of the applicant and about the age of the applicant. The learned counsel for the appellant/insurance company vehemently argued that the assessment of the loss of earning capacity is contrary to the provisions of the Workmen's Compensation Act and that the Doctor who examined the applicant merely certified the disability as 50%. Therefore, it is his contention that the applicant was awarded exorbitant compensation and the same should be scaled down. It is also his alternate contention that the age of the applicant should have been taken as 48 years and not as 47 years. Therefore, the learned counsel argued in the alternative that the order of the Commissioner should be modified in line with the submissions made.

This Court on a consideration of the facts and circumstances notices that the Doctor who gave Ex.A.5 certificate was examined as PW.2. He clearly held that the applicant suffered from the following injuries:

Wedge compression of L-1, L-2 Vertebrae and shield fracture of shaft of femur on right side with knee orthosies.

In addition, the Doctor also deposed that PW.1 cannot drive any heavy vehicles due to the fracture received by him and it is sequelae (the condition which is a consequence of previous diseases/injuries). It is noticed that there is no cross-examination of PW.2-Doctor on this. On the contrary, the Doctor also deposed in the cross-examination that the disability may reduce or may not reduce in the course of time. This Court notices that the insurance company did not introduce any evidence of its own as against the medical evidence to contradict the evidence of PW.2-Doctor. The cross-examination of the doctor did not take away the intrinsic worth of this deposition.

Therefore, this Court is of the opinion that the Doctor's evidence fixing 50% disability is correct. A consequence of the disability is the loss of earning capacity. Despite the Doctor stating very clearly in his deposition that PW.1 cannot drive any heavy vehicle due to the fracture received by him and its consequences, the Commissioner negated the argument of the applicant that loss of earning capacity should be taken as 100%. The Commissioner in his wisdom thought it fit to assess the loss of earning capacity as 80% only. This Court does not find anything wrong with the said assessment.

The other factor that is argued by the learned counsel for the appellant/insurance company is that the original driving licence filed by the applicant shows that his age is 48

years, but at the time of calculation, the age of the workman/driver was taken as 47 years. Therefore, the learned counsel argued that there is an error.

It is clear that there is a discrepancy on this ground. In the interest of justice, this Court feels that this part of the award should be corrected and the age of the workman should be taken as 48 years, instead of 47 years. Consequently, the calculation of compensation is modified as follows:

60% Wages - Rs.3,700/-, Age: 48 years, relevant factor is 159.80, loss of earning capacity – 80%.

$\text{Rs.3,700} \times 60/100 \times 159.80 \times 80/100 = \text{Rs.2,83,804.80}$

As no other points were raised or urged, the findings of the Commissioner are confirmed. Hence, the Civil Miscellaneous Appeal is dismissed with the partial modification as mentioned. In the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 14.06.2018
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