

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.891 OF 2008

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 30 of the Workmen's Compensation Act, 1923, is preferred by the applicant dissatisfied with the award of Rs.96,768/- as compensation by order dated 16.03.2004 passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, in W.C. Case No.51 of 2000 (NF) for the injuries sustained by the applicant while under employment of respondent No.1 - Opposite Party No.1.

2. Heard Sri K. Sarala Mahender Reddy, learned counsel for the applicant, and Sri N.J. Sunil Kumar, learned counsel for respondent No.2 viz., The United India Insurance Company Limited, Armoor, Nizamabad District, and perused the order under challenge including the material on record.

3. The only point urged by the learned counsel for the applicant is that the learned Commissioner without giving credence to the disability certificate under Ex.A-7 and instead of accepting 60% disability, on assumptions, reduced it to 40% without any concrete grounds or satisfactory reasons. That has been the only controversy in the present civil miscellaneous appeal.

4. The appeal against respondent No.1, employer, was dismissed for non-prosecution.

5. The relevant portion relating to discussion on the disability percentage and the entries in Ex.A-7 is occurring in page No.4 of the order under challenge. What all the learned Commissioner records is that in the cross-examination of PW.2 when the learned counsel for the insurer suggested that the doctor has exaggerated the disability suffered by the applicant, on perusal of records, it is seen that the doctor, who was examined as PW.2, has not specifically mentioned in his evidence that what type of tests he has undertaken while issuing disability certificate and it was issued about three years after the accident, and, therefore, it may be safely concluded that PW.2 has issued the disability certificate with more or abnormal percentage of disability and subsequently deposed that loss of earning capacity of the applicant is 60% and keeping in view reduction of disability in future course of time, he opined that ends of justice will be met by taking loss of earning capacity at 40% for the purpose of compensation.

6. When once the medical officer examined as PW.2 has given a disability certificate mentioning degree of partial permanent disability as 60%, there is no need to refer to any test being conducted by him and on that ground, certainly, it cannot be reduced from 60% to 40%, by fixing 40%.

7. Therefore, the loss of earning capacity is treated as 60% as against 40%. Thus, when computed, the loss of earning capacity works out to Rs.1,45,152/- (Rs.1,800/- x 60/100 x 224 x 60/100) and the same is accordingly awarded as against Rs.96,768/- awarded by the learned Commissioner.

8. Concerning award of interest, the operative portion of the order would show that only a direction was given directing opposite party Nos.1 and 2 to deposit the compensation within thirty (30) days from the date of receipt of that order. Hence, interest is awarded at 12% per annum from the date of accident till the amount deposited.

9. With the above modifications, the Civil Miscellaneous Appeal is allowed in part as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

June 13, 2018.

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