

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A. No.626 OF 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant-Insurance Company aggrieved by the order dated 11.12.2003 in W.C.No.66 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

2. Heard the learned counsel for the appellant-Insurance Company and the learned counsel for the respondent-applicant.

3. Learned counsel for the appellant-Insurance Company would contend that the Commissioner has erroneously held that the loss of earning capacity of the applicant is at 100%, which is contrary to the medical evidence. Further, the Commissioner ought not to have disbelieved the evidence of A.W.2 doctor, who has treated the injured, and that the Commissioner erroneously arrived at the conclusion that the Insurance Company is liable to pay compensation of Rs.2,91,438/- and ultimately prayed to reduce the compensation to the extent of 40% disability suffered by the applicant.

4. On the other hand, learned counsel for the respondent-applicant would contend that the Commissioner has taken the evidence into consideration and rightly awarded the compensation. There is

nothing to take a different view and ultimately prayed to dismiss the appeal.

5. There is no dispute that the applicant is the workman under respondent No.2 herein working in the lorry bearing No.AP 20T 5719. As per the evidence, it is established that the applicant was employed by the owner of the lorry and he suffered injuries in a motor accident which occurred on 01.04.2003 in the course of his employment. The finding is based on evidence on record.

6. The only point that is required to be determined is, whether the compensation awarded is excessive?

7. To substantiate his claim, the applicant got examined doctor T.Prasad, Orthopaedic Surgeon as A.W.2. His evidence reveals that the applicant suffered with mal union of shaft of right femur besides shortening of leg and stiffness of the knee and hip. The deformity of the thigh due to the fracture could be seen with naked eye. He assessed the physical disability suffered by the applicant at 40%. The applicant was a cleaner and his employment demands lot of stress and strain on both the lower and upper limbs. As the applicant is limping with deformed thigh, it is not possible to him to perform his duties as cleaner on heavy vehicle as he was performing prior to accident.

8. Learned counsel for the respondent No.1/applicant placed reliance on the judgment reported in ***Rayapati Venkateswar Rao v.***

***Mantal Sambasiva Rao and another*¹** and contends that the Commissioner has assessed the loss of earning capacity of the applicant at 100%.

9. Learned counsel appearing for the appellant-Insurance Company would contend that as per law, the Commissioner ought not to have assessed the loss of earning capacity of the applicant at 100% and at the most, it can be taken at 50%. As can be seen from the record, it is evident that respondent No.1/applicant suffered with mal union of shaft of right femur besides shortening of leg and stiffness of the knee and hip. A.W.2, who is the doctor, assessed the physical disability suffered by the applicant at 40%. But the Commissioner substituted the opinion given by A.W.2 doctor and has taken the loss of earning capacity of the applicant at 100% instead of 40%. As the percentage of disability suffered by respondent No.1/applicant is 50%, which is evident from the medical record, the learned Commissioner ought not to have taken the loss of earnings at 100%, and at the most, he could have taken it as 50%. Therefore, the total compensation payable to respondent No.1/applicant is calculated at Rs.1,45,719/- (viz. 50% of Rs.2,91,438/-) besides the other amounts awarded by the Commissioner i.e., Rs.584/- towards stamp fee and Rs.500/- towards advocate fee. In all, respondent No.1/applicant is entitled to compensation of Rs.1,46,803/-.

¹ 2001(1) ALD 435

10. In the result, the appeal is allowed accordingly, reducing the compensation awarded by the learned Commissioner from Rs.2,91,328/- to Rs.1,46,803/-. The respondent No.1/applicant is entitled to interest at 12% per annum on Rs.1,45,719/- from the date of petition till the date of deposit. The Tribunal is directed to return the excess amount deposited by the insurance company. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Date: 06.06.2018
ssp

Dr. SHAMEEM AKTHER, J

