

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

CIVIL MISCELLANEOUS APPEAL No.474 OF 2009

JUDGMENT:

This appeal is filed by the Insurance Company against the order dated 02.03.2005 in W.C.No.2 of 2003 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad.

It is the case of the respondent/applicant that she was an employee of Opposite Party No.1. She further averred that on 30.03.2002 while she was working in the factory of Opposite Party No.1 she sustained an injury, as a result of which her entire left hand was separated from her body. Amputation of the left hand above the elbow was ultimately carried out. Therefore, she filed the said W.C. against Opposite Party No.1, who is the owner of the factory and Opposite Party No.2, who is the insurance company. Counters were filed by the Opposite Parties denying their claim. On behalf of the applicant, Exs.A1 to A.6 were marked. On behalf of the respondents, none were examined. Ex.B1 copy of insurance policy was marked with consent. The learned Commissioner after considering the factual and other aspects awarded compensation of Rs.1,82,858/-. The said order is now impugned in the present appeal.

Heard Sri N.S.Bahaskar Rao, learned Standing Counsel for the Insurance Company and Sri S.Chandra Shekhar, learned counsel for respondent No.1 and Sri S.Surender Reddy, learned counsel for respondent No.2.

The two grounds urged by the learned Standing Counsel for the Insurance Company are that a) the assessment of loss of

earning capacity is very high and b) the award of interest from the date of accident is contrary to law.

Learned Standing Counsel pointed out that there is no proof to show that there is any loss of earning capacity and that therefore, the Commissioner went wrong in awarding 75% as loss of earning capacity. In this case, it is his contention that the injury sustained will not lead to such a loss of earning capacity. As far as interest is concerned, it is his submission that interest cannot be awarded from the date of the accident. He also argues in the alternative that the injured did not even given a notice till November, 2002 and therefore, in the alternative it is his submission that if interest is to be awarded it can be awarded from November, 2002 only.

On the other hand, learned counsel for the respondents supported the award in question and states that it is a reasoned and good award which was passed after considering the case law also on the subject.

As seen from the record, it is clear that the accident in this case occurred in the course of employment and a young girl who is aged 8 years has lost her arm and there is amputation of left hand above the elbow also. Therefore, this Court is of the opinion that the assessment of loss of earning capacity is correct and this Court is of the opinion that there is no error committed by the Court below. In fact, the answer to both the points urged by the learned counsel is found in a leading judgment in the case of **Pratap Narain Singh Deo v. Srinivas Sabata and another**¹, wherein 100% loss of disability was assessed when there is an amputation

¹ 1976(1) SCC 289

and it is also held that compensation is payable from the date of accident itself. In the case cited in the lower Court in ***Ved Prakash Garg v. Premi Devi and others***² also, it is made clear that the insurance company is liable to pay the interest.

Therefore, in view of the clear decisions of the Hon'ble Supreme Court, this Court is of the opinion that the assessment of earning capacity is correct and that interest is also payable from the date of accident till the date of realization. For all these reasons, this Court is of the opinion that there are no merits in the appeal.

In the result, the appeal is dismissed. No costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

Date : 21.02.2018
ssp

D.V.S.S.SOMAYAJULU, J

² AIR 1997 SCC 3854