

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

CMA.No. 782 of 2009

J U D G M E N T:

This appeal is filed by the United India Insurance Company Ltd., against the order dated 29.12.2008 passed in WC.No.58 of 2005 by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Ananthapur.

The case before the lower Court was filed by one Kadium Tirupathaiah, who was employed by respondent Nos. 1 and 2. He states that on 09.06.2005, while he was working, an accident occurred as a result of which he sustained injuries, which are permanent in nature. Therefore, he filed an application seeking compensation against respondents 1 and 2 and the insurance company-opposite party No.3. The first opposite party filed a counter admitting the accident. The second opposite party filed a counter denying the accident and stating that the first opposite party is the employer of the injured and that they are not in any way responsible for the accident. Opposite party No.3 filed a counter denying the entire accident and the claim made.

On behalf of the applicant, AW.1 (applicant) was examined along with the Doctor (AW.2), who gave the medical certificate and Exs.A.1 to A.7 were marked. For opposite

party No.1, RW.1 was examined and Exs.B.1 to B.6 were marked. On behalf of the opposite party No.3, Ex.B.7 copy of the policy was marked.

After considering the oral and documentary evidence and the legal submissions made, the Commissioner passed the impugned order directing all the three opposite parties to pay the sum awarded with costs and interest. This order is now being assailed in the appeal.

This Court has heard Sri V.Samba Siva Rao, learned counsel for the appellant and Sri Karanam Ravi Sankar Babu, learned counsel for respondent No.1 and Smt. G.Sudha, learned counsel for respondent No.3.

In the lower Court, a number of issues were raised and argued, but the grounds that are urged in the appeal and which were argued during the oral submissions, essentially, are on the quantum of compensation that is awarded.

Learned counsel for the appellant argued that the assessment of loss of earning capacity of the injured is high and that the lower Court did not follow the settled legal principles in awarding compensation. According to the learned counsel, the assessment of loss of earning capacity should have been equated to what the Doctor has said as the specific disability-namely 60% only.

On the other hand, learned counsel for the respondents argued that the percentage of disability cannot be fixed with

mathematical precision and that each case has to be judged on its own facts. According to him, even if the injury is small, if it totally incapacitates a person from earning anything, it should be presumed that the loss of earning capacity is 100%.

Learned counsel for the appellant also relied upon a judgment reported in ***Lingampalli Rajam (died) by LRs. v. Colliery Manager, Morgan's Pit Singareni Collieries Co., Ltd.***¹ and argued that the percentage of compensation is fixed incorrectly. On the other hand, it was pointed out by the learned counsel for the respondents that the assessment of loss of earning capacity was done by a Doctor, who is a member of the Medical Board. Ex.A.3 is the medical certificate issued by the Board. It clearly shows that the hand of the employee was amputated. The Doctor came and gave evidence in the Court as AW.2. He clearly deposed that the employee cannot perform any work with his left hand and any work which needs two hands. He clearly stated hence, he lost his earnings. The cross-examination of the Doctor does not in any way take away the intrinsic worth of his evidence. It is an admitted fact that the applicant was a skilled labourer, who as per the evidence, was promoted from a semi-skilled labourer to a skilled labourer (evidence of OP.1).

¹ 2000 (2) ALT 115

In the light of the medical evidence and the evidence of first the opposite party, it is clear that a skilled labourer lost his left hand due to the amputation. Five judges of the Hon'ble Supreme Court of India in the case of ***Pratap Narain Singh Deo V. Srinivas Sabata and Another***², held that a carpenter, who lost his left hand due to amputation cannot work as a carpenter anymore. So they held that the disablement was total. This was followed in the case of ***K. Janardhan v. United India Insurance Co. Ltd. and Another***³ and other cases.

In view of this clear exposition of law by five judges of the Supreme Court of India, this Court is of the opinion that the order of the Commissioner is correct on the question of assessment of loss of earning capacity. A skilled labourer lost his arm due to the accident. Hence the percentage of loss of earning capacity has to be 100 % only.

The appellants have not urged any ground to interfere with the findings of the lower Court on the assessment of damages. As this is the only issue raised in the grounds and argued, the findings in this case are also confined to the said issue.

The appeal is, therefore, dismissed and the findings of the lower Court are confirmed. No order as to costs.

² AIR 1976 SC 222

³ 2008 (8) SCC 518

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

D.V.S.S.SOMAYAJULU,J

Date: 06.04.2018

KLP

