

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**C.M.A.NO.1101 of 2008****JUDGMENT:**

This is an appeal filed against the orders dated 21.6.2007 passed in WC.No.64 of 2004 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-1, Guntur.

The application was filed in the lower Court by the applicant who is the appellant herein claiming compensation of Rs.,3,50,000/- for the injury sustained by him in the course of employment on 17.12.2003. The first Opposite Party is the owner of the lorry in which he was working. Second Opposite Party was the Insurance Company which insured the said vehicle.

On behalf of the applicant, two witnesses were examined and EXs.A1 to A4 were marked. For the respondents, no evidence was recorded.

After considering the evidence on record, the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Guntur, came to a conclusion that a sum of Rs.75,382/- is payable. He assessed the loss of earning capacity as 20%.

It is this order that is assailed in the present appeal.

This Court has Sri B.Parameswara Rao, Advocate for the appellant and Sri E.Venugopal Reddy for the respondents.

The short and simple the point that is canvassed by the learned counsel for the appellant is about the loss of earning capacity and the disability certificate issued by the Medical Board fixing the percentage of disability as 45%. He states that this

document was overlooked and ignored by the learned Commissioner who decided that the loss of earning capacity is 20% and, therefore, he assails the order on the ground that proper compensation has not been granted.

In reply thereto, the learned counsel for Respondent no.2 points out that the doctor or doctors who have signed on Ex.A.4 are not examined. He also points that Ex.A4 has writings with different inks by different people. It is also not clear when and how the Medical Board assessed the disability. He further submits that the loss of earning capacity cannot be equated to percentage of physical disability. Therefore, the learned counsel argues that assessment of loss of earning capacity is correct.

This Court, after hearing both the counsels on the submissions made, finds that the document which is purportedly signed by three doctors does contain two different handwritings and ink. It is not clear who actually certified the disability as 45%. In addition, the medical report was given by the Medical Board i.e. in the same town where the hearings were held at Guntur. No attempt was made to prove the certificate or the contents of the certificate by summoning the doctors in the Government General Hospital, Guntur. Nothing prevented the appellant from examining the doctors to prove the disability. This Court finds that the loss of earning capacity was also assessed by the Commissioner after a physical examination of the applicant. The injury sustained also are noticed as fractures which did not lead to any permanent disability in the form of a continuing disability.

Even the evidence of the appellant is not very strong and he merely says 'I am not fit to work as driver any more'. There is no

other evidence to show that the assessment of loss of earning capacity is wrong. In the circumstances, a) as the document which is filed as medical certificate is of doubtful character and b) the Commissioner had the benefit of examining the appellant in the open Court, which benefit this Court does not have and c) there is no other material to come to a conclusion that the loss of earning capacity is wrongly assessed, this Court concurs with the findings of the Commissioner.

Hence, this Court find no merits in the appeal and the appeal is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.
No order as to costs.

D.V.S.S.SOMAYAJULU, J

Date: 22/02/2018

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