

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

CIVIL MISCELLANEOUS APPEAL No.630 OF 2007

JUDGMENT:

This appeal is filed by the Insurance Company against the order dated 20.05.2006 in W.C.No.53 of 2005 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada.

The case of the respondent/applicant is that he was working as a driver under Opposite Party No.1, who is the owner of the lorry bearing No.AP15T 5778 and Opposite Party No.2 is the insurer of the said vehicle. He further averred that the accident occurred out of and in the course of employment on 08.04.2005. The said application was filed before the Court below claiming compensation of Rs.4,00,000/-.

Both the parties have filed their counters and denied the claim. On behalf of the applicant, A.W.1 was examined and Exs.A1 to A7 were marked. A.W.2 is Opposite Party No.1. A.W.3 is the doctor, who examined A.W.1 and issued Ex.A4 certificate stating that his disability is 70%. None were examined on behalf of the respondents.

Based on the evidence adduced, the learned Commissioner came to a conclusion that a sum of Rs.4,34,383/- is payable by both the opposite parties to the applicant. It is this order, that is assailed in the present appeal.

Heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri Ravi Kumar Tolety, learned counsel for the respondent.

The short and simple point that is urged by the learned counsel for the appellant is that the Act/Schedule strictly fixes the assessment of loss of earning capacity and that the Court should not therefore award anything more than what is stipulated in the Act/Schedule. It is his submission that language used in the order is very clear and the percentage of loss of earning capacity is also fixed in the Act/Schedule itself, particularly, for non schedule injuries. Therefore, when the disability is fixed and the percentage of loss of earning capacity is also fixed, this Court should not assess anything higher in the loss of earning capacity. He also points out that part-II of schedule-I of Workmen's Compensation Act, 1923 deals with amputation and stated that the percentage of loss of earning capacity is 70% only. Therefore, the Commissioner went wrong in assessing the loss of earning capacity as 100% since the disability is only 70%. If, loss of earning capacity is assessed as 70%, the compensation payable comes to only Rs.3,04,068/-. He, therefore, pressed for scaling down the compensation.

On the other hand, learned counsel for the respondent submits that by a series of judicial interpretations, Courts have taken the view that loss of earning capacity cannot be equated to the physical disability assessed by the doctor. As amputation of leg was carried out in this case, the applicant is not in a position to carry out his employment as before. According to the learned counsel for the respondent due to the loss of leg below the knee, the applicant, who was a driver, is completely disabled from carrying out of his functions as a driver. Therefore, the loss of earning capacity should be assessed as 100%. He relies upon a judgment of the learned Single Judge of this Court reported in

N.Sree Ramulu @ Sree Rama Murthy v. B.Lakshmi Narayana and another¹ wherein similar circumstances, the learned single Judge held that because of the amputation of the leg, the driver in that case is not fit for driving of the vehicle and though the assessment of disability is less, the loss of earning capacity is fixed at 100%. This Court also notices the order in **K.Janardhan v. United India Insurance Company Limited**², wherein the tanker driver sustained an injury upto the knee joint and the Hon'ble Supreme Court of India held that his loss of earning capacity is 100%. The Supreme Court in that case followed the earlier judgment of **Pratap Narain Singh Deo v. Srinivas Sabata and another**³. The last is a judgment of four judges of the Supreme Court of India wherein a carpenter lost his arm and an elbow and the Supreme Court held that the loss of earning capacity is 100%.

In view of the two leading judgments of the Supreme Court of India on the subject and the decision of the learned Single Judge of the Andhra Pradesh High Court, this Court is bound by the same and holds that the loss of earning capacity should be assessed as 100% in this case also. A driver cannot 'drive' if there is amputation below his knee. Hence, this Court finds that there are no merits in the appeal and is liable to be dismissed.

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

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

D.V.S.S.SOMAYAJULU, J

Date : 14.02.2018
ssp

¹ 2013(5) ALD 249

² 2008(8) SCC 518

³ 1976(1) SCC 289