

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1060 OF 2008

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 30 of the Workmen's Compensation Act, 1923, is preferred by the applicant challenging the award, dated 16.03.2004, passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, in W.C. Case No.41 of 2001 (NF), whereby and whereunder, a sum of Rs.1,07,586/- was awarded as compensation for the injuries sustained by the applicant while under employment of respondent No.1 - Opposite Party No.1.

2. Heard Sri K. Sarala Mahender Reddy, learned counsel for the appellant-applicant. Though, Sri Booma Gangadhar, learned counsel entered appearance for respondent No.1, there is no representation on his behalf. Even there is no representation for respondent No.2 viz., The National Insurance Company Limited, and perused the order under challenge including the material on record.

3. The only point urged by the learned counsel for the applicant is that the learned Commissioner without giving credence to the disability certificate under Ex.A-12 and instead of accepting 70% loss of earning capacity, assuming reduction of disability in future course of time, considered the loss of earning capacity as 45% without any

concrete grounds or satisfactory reasons. That has been the only controversy in the present civil miscellaneous appeal.

4. The relevant portion relating to discussion on the disability percentage and the entries in Ex.A-12 is occurring in page No.4 of the order under challenge. What all the learned Commissioner records is that in the cross-examination of PW.2 when the learned counsel for the insurer suggested that the doctor has exaggerated the disability suffered by the applicant, on perusal of records, it is seen that the doctor, who was examined as PW.2, has not specifically mentioned in his evidence that what type of tests he has undergone while issuing disability certificate and it was issued about three years after the accident, and therefore, it may be safely concluded that PW.2 has issued the disability certificate with more or abnormal percentage of disability and subsequently deposed that loss of earning capacity of the applicant is 70% and keeping in view, reduction of disability in future course of time, he opined that ends of justice will be met if loss of earning capacity at 45% is assessed for the purpose of compensation.

5. When once the medical officer examined as PW.2 has given a disability certificate mentioning degree of partial permanent disability as 60%, there is no need to refer to any test being conducted by him and, on that ground, certainly, loss of earning capacity cannot be reduced from 70% to 45% on the assumption of reduction of disability in future course of time.

6. Therefore, the loss of earning capacity is treated as 70% as against 45%. Thus, when computed, the compensation would work out to Rs.1,67,355.72/- ($\text{Rs.1,800/-} \times 60/100 \times 221.37 \times 70/100$) and rounded off to Rs.1,67,356/- and the same is accordingly awarded as against Rs.1,07,586/- awarded by the learned Commissioner.

7. Concerning award of interest, the operative portion of the order would show that only a direction was given directing opposite party Nos.1 and 2 to deposit the compensation within thirty (30) days from the date of receipt of that order. Hence, interest is awarded at 12% per annum from the date of accident till deposit.

8. With the above modifications, the Civil Miscellaneous Appeal is allowed in part as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Civil Miscellaneous Appeal stand closed.

A. SHANKAR NARAYANA, J

June 14, 2018.

v v