

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

CIVIL MISCELLANEOUS APPEAL No.245 OF 2007

JUDGMENT

This appeal is filed by the Insurance Company questioning the order dated 11.10.2006 passed in W.C.C.No.2 of 2005 by the Commissioner for Workmen's Compensation, Eluru and Assistant Commissioner of Labour, Eluru.

The case of the applicant is that he was a driver of the car bearing No.AP37S 4554. He further averred that on 24.05.2004 while driving the said car, he met with an accident. Hence, he filed the W.C. case claiming compensation against opposite party No.1, who is the owner of the car and against opposite party No.2, the National Insurance Company, the insurer. After considering the oral and documentary evidence adduced by both the parties including the doctor's evidence A.W.2, the Court below came to a conclusion that Opposite Party Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,03,738/-. It is this order that is now challenged in the appeal.

Heard Sri M.Jeevan Reddy, learned counsel for the appellant and Sri K.Ramesh Babu, learned counsel for respondent No.1.

Learned counsel for the appellant submits that the assessment of compensation is very high and that although the disability is fixed at 40%, the Commissioner has granted 100% as loss of earning capacity. He also submits that the wages payable to the driver are not proved by any cogent evidence and therefore, he urged that the Court below was wrong.

Learned counsel for the respondent argued that the order passed by the learned Commissioner is correct. He submitted that

as per the settled law, learned Commissioner relied upon the Government orders which prescribed minimum wages. He also submitted that if the wages were not actually proved, the GOs can safely be relied upon.

This Court finds that the submission of the learned counsel for the respondent on this issue is correct. The settled case law on the subject is to the effect that the GOs on minimum wages can be relied upon. This Court, therefore, finds that there is no error committed by the Court below in this regard.

Coming to the issue on the percentage of the disability and the loss of earning capacity, learned counsel for the appellant submits that the medical board fixed the disability at 40% under Ex.A6, but the Commissioner granted 100% as loss of earning capacity. Learned counsel for the respondent relies upon the judgment of this Court in ***N.Sree Ramulu and others v. B.Lakshmi Narayana (died) and others***¹ wherein a review of the entire case law was carried out and he draws the attention of the Court in para 26.

Learned counsel for the respondent submitted that percentage of physical disability cannot be equated to the loss of earning capacity. A small injury according to him can also cause 100% loss of earning capacity. In this case, the medical board issued Ex.A6 disability certificate. The doctor, who is the member of the Medical Board was examined as A.W.2. The doctor clearly deposed that because of the fracture to right femur, fracture to the bones of both the legs, the applicant is not in a position to drive

¹ 2013(5) ALD 249

the vehicle. The doctor clearly deposed that because of the disability, he cannot drive the vehicle.

Learned counsel for the respondent rightly pointed out that there is absolutely no cross-examination of the doctor on the disability which is preventing the applicant to drive the vehicle in the future. It is pointed out by the learned counsel for the respondent that there is no cross-examination on the loss of earning capacity at all or the future disability. In similar circumstances, a Division Bench of this Court in a decision reported in ***Charan Singh v. G.Vittal Reddy and another***² held that the doctor, who treated the applicant, need not always be examined to prove the loss of earning capacity or the disability. The Division Bench held that if the insurance company or the employer was not satisfied with the assessment, contra evidence should have been adduced by the insurance company to rebut or impeach the evidence of the doctor. In this case, there is neither rebuttal evidence nor even cross-examination of the doctor. Therefore, this Court holds that the evidence given by the doctor cannot be ignored. The doctor has stated on oath that the applicant is not competent to drive the car. Therefore, this Court holds that the Commissioner rightly assessed the loss of earning capacity as 100%. Nothing to the contrary has been pointed out this Court during the course of submissions. Hence, this Court is of the opinion that the order of the Court below is correct and there are no grounds to set aside the same.

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

² 2003(1) ANWR 741

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

D.V.S.S.SOMAYAJULU, J

Date : 23.02.2018
ssp

