

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

CMA No. 465 of 2006

J U D G M E N T :

This is an appeal filed by the applicant/workman, who is dissatisfied with the compensation that is awarded to him by order dated 20.01.2006 in WC.No.18 of 2005 by the Commissioner for workman's compensation and Assistant Commissioner of Labour-1, Guntur.

The applicant filed WC.No.18 of 2005 stating that he was working as a Driver under first opposite party, who is the owner of the lorry bearing No.AIL 7576. He states that he sustained injuries in the course of his employment and hence, he filed a case against the owner of the vehicle and the insurer of the vehicle (opposite parties 1 and 2 respectively), claiming compensation of Rs.3,50,000/-.

The second opposite party filed a detailed counter denying the accident. On behalf of the applicant, AW.1 and AW.2-the Doctor, who gave a certificate, were examined as witnesses. No witnesses were examined for the respondents. The Commissioner, after hearing the parties and assessing the evidence, came to the conclusion that the loss of earning capacity is only 50% and proceeded to award the compensation assessing the loss of earning capacity as 50%. It is this finding that is assailed in the present appeal.

This Court heard B.Parameswara Rao, learned counsel for the appellant and Sri R.K.Suri, learned counsel for the respondents.

The learned counsel for the appellant/workman argues that the percentage of disability that is assessed is not correct and that his client is unable to do the job that he was executing earlier and that therefore, the loss of earning capacity should be fixed at 100%. He argued that disability cannot be equated to loss of earning capacity. He relies upon a judgment of the Hon'ble Supreme Court of India in the case of ***K.Janardhan vs. United India Insurance Co. Ltd. and Another***,¹ and argues that the loss of earning capacity should be fixed at 100% and that the appeal should be allowed.

In reply thereto, the learned counsel for the respondents argues that the medical evidence of the Doctor, who was examined as AW.2 is very clear and that the partial permanent disability in this case is only 50%. He also points out that in ***K.Janardhan's*** case (1 supra) before the Hon'ble Supreme Court of India, there was an amputation of the leg and therefore, the Hon'ble Supreme Court assessed the loss of earning capacity as 100%.

In the present case, there are only fractures as per the learned counsel and there is no evidence to show that applicant is totally unfit for the job he was carrying on. Learned counsel also drew the attention of this Court to a

¹ (2008) 8 SCC 518

judgment in *the United India Insurance Company Limited vs. S.K. Razak and Others*², wherein the learned single Judge of this Court, after analyzing the law on the subject, came to a conclusion that various factors have to be considered to come to a conclusion that there is total loss of earning capacity. The nature of the injury, the limb affected, the impact of such injury on the employment etc., are all matters, which have to be considered. The evidence of a qualified medical practitioner should also be given due importance unless it is shown to be irrational. The learned single Judge observed that in that case also the witnesses were not able to prove that the Driver was disabled from driving and was also unable to perform any other work. Therefore, after analyzing the evidence the learned Judge came to a conclusion that 50% loss of earning capacity was commensurate.

This Court also finds that the evidence in this case does not disclose that the applicant was unable to perform any other job. There is no evidence filed to show that he is unable to work at all. Therefore, this Court in line with the judgment of the learned single Judge reported in *S.K. Razak's* case (2 supra) and after considering the evidence on record, comes to the conclusion that the assessment of disability is correct. Nothing has been pointed out in the course of the submission to enable this Court to decide against the findings of the lower Court.

² 2015 (4) ALD 291

This Court does not find any reasons to interfere with the order of the lower Court. The impugned order of the lower Court is, therefore, confirmed and the appeal is dismissed. No costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 06.02.2018
KLP

