

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.651 OF 2010

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923 by the Insurance Company-Opposite Party No.2 in W.C. No.120 of 2005 challenging the Award of Rs.3,32,596/- towards compensation for the injuries sustained by respondent No.1-applicant during the course of employment.

2. Heard Sri V. Sambasiva Rao, learned Standing Counsel for the appellant and Sri B. Venkat Reddy, learned counsel for respondent No.1-applicant.

3. The submissions of the learned Standing Counsel for the appellant have been that the Commissioner did not properly appreciate the evidence and his finding that there is employer and employee relationship between the applicant and Opposite Party No.1 is unjustified as there is no legally acceptable evidence on record. His further submission is that the Doctor (A.W.2) certified physical disability at 50%, Commissioner was not justified in assessing the loss of earning capacity at 75% despite the fact that A.W.2 did not whisper in his chief-examination as to percentage of loss of earning capacity. His further submission is that A.W.2 admittedly did not treat the applicant, and, therefore, to set aside the order of the learned

Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad.

4. Learned Counsel, Sri B. Venkat Reddy, on the other hand, would submit that though, A.W.2 did not treat the applicant, but on examination of the applicant arrived at 50% disability and issued a Disability Certificate-Ex.A4 and the Commissioner did not go wrong in assessing the loss of earning capacity at 75%, and, therefore, the finding recorded by the Commissioner is based on the assertions made by A.W.2 and answers given in his cross-examination.

5. The finding recorded by the learned Commissioner in regard to employee and employer relationship between the applicant and respondent No.1 since based on appreciation of evidence, and there is nothing to show in the cross-examination of A.Ws.1 and 2 that A.W.1 was not employed, and, more particularly, when Opposite Party No.2 did not adduce any evidence, the said finding does not warrant interference.

6. Turning to the second ground that the Commissioner ought not to have assessed loss of earning capacity at 75% in contravention of what has been spoken to by A.W.2 in assessing the physical disability at 50% and did not assert the loss of earning capacity at 75%, the submission of the learned Standing Counsel is that unless medical officer in his evidence asserts that on account of physical disability of 50% loss of earning capacity of A.W.1 would

be 75%, in his view, the Commissioner was not justified in assessing the loss of earning capacity at 75%, and, therefore, urges to interfere with the said finding.

7. A perusal of the cross-examination of A.W.2 is relevant to mention in the present context. He denied the suggestion that the disability would be less than 50%. He also denied the suggestion that A.W.1 can drive heavy vehicles with the present disability in future. Even he denied the suggestion that A.W.1 can drive other Light Motor Vehicles with the physical disability of 50%, but, he admits that A.W.1 can do other work by way of sitting. When such denials are occurring in his cross-examination, an inference that the loss of earning capacity is more than the percentage of disability assessed by him, more particularly, the view of the Doctor (A.W.2) that the applicant cannot even drive the Light Motor Vehicles on account of disability he suffered, the assessment of 75% towards loss of earning capacity by the Commissioner cannot be faulted.

8. Hence, there is no merit in the present Civil Miscellaneous Appeal, and the Appeal is, therefore, dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Miscellaneous Appeal shall stand closed.

A.SHANKAR NARAYANA,J

Dt. 20.06.2018
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