

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

C.M.A.No.1042 of 2008

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the Insurance Company against the order dated 30.09.2005 passed in WC No.22 of 2005 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru, West Godavari District.

The application is filed by one Sri J. Raju, cleaner of lorry bearing No.APK-8267. He was working as a cleaner under second opposite party on a monthly salary of Rs.3,000/-. On 15.11.2003 he met with an accident on National Highway-5 at Denduluru and received grievous injuries all over his body. Immediately, he was shifted to the Government Hospital, Eluru, for treatment and later shifted to a private hospital for better treatment. The first opposite party is the driver of the vehicle at the time of the accident. The second opposite party is the owner of the vehicle. The third opposite party is the insurer of the vehicle. Since the opposite parties did not pay any compensation amount, he filed a WC case claiming compensation of Rs.3,50,000/- for the grievous injuries sustained by him.

The opposite parties 1 & 2 did not appear before the lower Court and they remained *ex parte*. The third opposite party filed a counter denying the entire case including

accident, employment, age, wages etc., and contested the case.

The applicant was examined as AW.1 and one Dr. A.V.R. Mohan, who issued the medical certificate, was examined as AW.2 and Exs.A.1 to A.7 were marked. For the third opposite party, RW.1 was examined and a copy of the insurance policy was marked as Ex.R.1.

After considering the oral and documentary evidence, the Commissioner came to a conclusion that the applicant is entitled to compensation of Rs.2,93,935/- and directed the opposite parties 2 & 3 to pay the same jointly and severally. Questioning the said order, the Insurance Company filed the present appeal.

This Court heard N.S. Bhaskar Rao, learned counsel for the appellant/insurance company; Sri I. Gopal Reddy, learned counsel for the first respondent/applicant; Sri K. Chidambaram, learned counsel for the second respondent/first opposite party and T. Jagadish, learned counsel for the third respondent/second opposite party.

The essential ground that has been urged as can be seen both from the grounds of appeal and the arguments submitted in the open court is about the assessment of the percentage of loss of earning capacity.

The learned counsel for the appellant/insurance company argued that even though the Doctor gave a certificate stating that the percentage of disability is only

50%, the Commissioner erred in awarding loss of earning capacity as 100%. He argued that the assessment is wrong and that for a simple fracture, 100% loss of earning capacity cannot be awarded. Therefore, the learned counsel for the appellant argued that the Commissioner committed a grave error in awarding the loss of earning capacity as he did.

In response thereto, the learned counsel for the first respondent/applicant that there cannot be any straight jacket formula for deciding the loss of earning capacity and that in some cases, even a simple injury can cause 100% loss of earning capacity.

This Court after hearing both the learned counsel on the point that is urged in the appeal noticed that the applicant has filed Ex.A.6 medical certificate wherein the District Medical Board came to the conclusion that the applicant has 50% physical disability. Thereafter, the applicant summoned his entire medical record from the Superintendent of Government Hospital, Eluru and brought the same to the Court. He also examined the Doctor, who gave the medical certificate, as AW.2. The said Doctor deposed that the injured workman cannot work as a cleaner, that he cannot climb and move freely. The cross-examination of this Doctor is however perfunctory. No serious cross-examination was carried out and a question was put to him that the upper limbs of the applicant are working normally.

This Court also noticed that the medical record was summoned and the same is available in the case bundle. The medical record could have been yet used by the applicant to cross-examine the Doctor if they were of the opinion that the injuries are simple in nature and do not cause the disability as projected by the applicant/workman. No independent evidence was also let in to question the medical assessment. In the absence of any such cross-examination or evidence, the appellant cannot argue that the assessment of disability is wrong. The appellant merely examined RW.1 who filed Ex.B.1 insurance policy and stated that the policy is in force as on the date of the accident.

As has been held in number of cases starting from ***Pratap Narain Singh Deo v. Srinivas Sabata and another***¹, and by this Court time and again, the purpose of Workmen's Compensation Act is to provide compensation to the injured/workman and that the provisions of the Act should liberally interpreted with a view to give effect to the provisions of the Act. The case law is also clear on the subject that even a simple injury can some times cause a total loss of earning capacity. It cannot be presumed with certainty in every case that injury would be equated to the loss of earning capacity. In this case, the Doctor clearly deposed that the applicant cannot work as a cleaner any more. If the worker was totally incapable of doing the job he was performing till date, it will mean a total loss of earning capacity. Therefore, this Court

¹ AIR 1976 SC 222

has no hesitation to hold particularly in the light of Doctor's evidence that the assessment of loss of disability was 100% is correct and that no grounds are made out to disregard the same. This Court also agrees with the passage from the judgment reported in **Gona Sivasankar v. K. Varaprasad** ² wherein a learned single Judge held as follows:

“Neither law nor logic requires that the percentage of both the factors have to be the same. Depending on the nature of employment, an injury to a limb or organ may result in almost total loss of earning capacity, whereas in other cases, it may not have any impact at all. It is too difficult to decide these issues with mathematical precision. Unless it is urged before the Court that the exercise undertaken by the commissioner was perverse or totally arbitrary, this Court cannot interfere with the same. Neither the appellants nor the respondents are able to convince the Court that the fixation of the loss of earning capacity by the Commissioner suffers from such irregularity.”

For all the above reasons, this Court holds that the assessment of loss of earning capacity is correct and that there is no infirmity in the impugned order. Consequently, this Court holds that there are no merits in the appeal.

Accordingly, the Civil Miscellaneous Appeal is dismissed. The order dated 30.09.2005 passed in WC No.22 of 2005 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Eluru, is confirmed. However, in the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 16.04.2018
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² 2005 (1) ALD 386