

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA
CIVIL MISCELLANEOUS APPEAL No.483 of 2008

JUDGMENT:

The present appeal is preferred by Opposite Party No.2 – United India Insurance Company Limited in W.C.No.216 of 2004 on the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad (for short, 'Commissioner') challenging the order, dated 26.07.2006, passed by the Commissioner.

For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid W.C.

Heard Sri P. Gopal Das, learned Standing Counsel for the insurer – Opposite Party No.2, and Sri K.V. Raghuveer, learned counsel for the applicant. No representation for Opposite Party No.1. The CMA was dismissed against Opposite Party No.3, who is respondent No.3 herein, on 16.03.2016. Of course, no liability was fastened on Opposite Party No.3 by the Commissioner.

The main ground urged by the learned Standing Counsel has been that there was no amputation and the Commissioner merely carried away what has been stated by the doctor as AW.2 and assessed loss of earning capacity at 75%. It is his submission that the doctor, who treated the applicant, has certified the disability at 45% and merely because there has been 2 inches shortening of right leg and restriction of right knee movements, the Commissioner ought not to have considered the loss of

earning capacity at 75%. That has been the main argument advanced by learned counsel for the insurer.

Perused the order under challenge. The Commissioner has specifically mentioned that the applicant was the driver of heavy goods vehicle and with 2 inches shortening of leg and restriction of movements of right ankle and knee, it will be difficult for a driver to drive the vehicle and, therefore, considered the loss of earning capacity at 75% while assessing the compensation. In fact, the Medical Officer has assessed the earning capacity at 100%. No doubt, when a driver suffers 2 inches shortening of leg, certainly, it will be difficult for him to continue his occupation. Therefore, there is absolutely no merit in the present appeal and what was awarded by the Commissioner assessing the loss of earning capacity at 75% does not suffer from any legal infirmity warranting interference.

Hence, the Civil Miscellaneous Appeal is dismissed confirming the order under challenge passed by the Commissioner. No order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

14.06.2018

v v