

THE HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A. No.1097 of 2006

JUDGMENT:

This appeal is filed initially by one P.Venkaiah against the owner of lorry No. AP 7/V-4239 of and the Oriental Insurance Company Limited stating that he sustained injuries in an accident that occurred on 07.07.2003. The claim was made seeking compensation for the said injuries. The first Opposite Party, who is the owner of the lorry did not appear and was set *ex parte*. The second Opposite Party appeared and filed written statement denying the entire incident and claim etc. Later the applicant died and his Legal Representatives were brought on record and they prosecuted the matter. For the applicants, AW-1 was examined and Exs. A-1 to A-5 were marked. For the respondents, no oral or documentary evidence were let in. Based on the available evidence, the Commissioner came to the conclusion that the deceased-P.Venakaiah was under the employment of Opposite Party 1/respondent No.1 in appeal. However, the Commissioner dismissed the case on 25.09.2006 on the ground that there is no evidence adduced by the applicants to determine the percentage of the disability and the resultant loss in the earning capacity sustained by the deceased at that time. This order is now impugned in the appeal.

This Court has heard Sri Syed Ghouse Basha, learned counsel for the appellants and Sri K.Ashok Ramarao, learned counsel for the respondents.

It is the contention of learned counsel for the appellants that the appellants who are the wife and children can maintain the appeal and prosecute the appeal. He relied upon the Judgment of the Division Bench of Karnataka High Court in the case of **Jogaiah v. M/s Sri Satya Sai Tourist, Bengaluru**¹. This Court agrees with the contention that the wife and children can maintain and continue the application/appeal filed by the injured workman.

The precise point urged by the learned counsel for the respondents is that even if the accident and injuries sustained by the deceased are admitted, unless and until, there is quantification for the disability as per the provisions of the Workmen's Compensation Act, no compensation can be awarded.

This Court also notices that there is absolutely no evidence on record to show the quantification for the disability. The entire scheme of the Workmen's Compensation Act, deals with injuries and loss of earning capacity pursuant to such injuries. The schedules, themselves prescribe the percentage of loss of earning capacity. For the other injuries, the Medical Practitioner has to assess the loss of earning capacity basing on the disability. In case of death Section 4 fixes the compensation. Therefore, learned counsel for the respondents rightly pointed out that the entire scheme of the Act proceeds on the basis of injury and the loss of earning capacity. In this case, absolutely, no material is placed to show the loss of earning capacity of applicant No.1. The wages drawn; the age etc., are not proved. The claim is for injuries sustained (the workman died later) but no disability certificate or

¹ 2016 (2) An.W.R. 168 DB

medical evidence was let in to prove the injury sustained and the consequent loss of earning capacity. No attempts were made to advance any such evidence. This Court is constrained to hold that there are no merits in the appeal. Consequently, the appeal is dismissed confirming the order of the Lower Court. In the circumstances, no costs.

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

JUSTICE D.V.S.S. SOMAYAJULU

Date:28.02.2018
slk

