

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.639 OF 2008

JUDGMENT:

The applicant in WC.No.35 of 2005 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour – I, Guntur, preferred the present Civil Miscellaneous Appeal under Section 30 of the Workmen Compensation Act (for short 'the Act'), seeking enhancement of the amount granted by the Commissioner. He laid the claim basing on the injuries he sustained while under employment. As opined by AW.2, the Medical Officer, the injuries sustained by the applicant resulted in partial permanent disability to the tune of 25% to 30% and there is restriction to the extent of 20 degrees of proximal right knee joint.

The fact-situation is not in dispute between the parties.

Learned counsel for the appellant – applicant would rely on the decision of this Court in **N. Sree Ramulu @ Sree Rama Murthy v. B. Lakshmi Narayana**¹. Relying on the guiding principles culled out by a learned Single Judge of this Court in the decision in **N. Sree Ramulu** (1 supra) basing on the decisions of the Honourable Supreme Court and this Court, learned counsel would submit that clause (h) contained in paragraph '26' would deal with assessment of compensation basing on the disability and the injuries sustained by the injured. His submission is that the applicant is a driver and since there

¹ 2013 (5) ALD 249

is restriction of terminal 20 degrees of proximal right knee joint, it is difficult for the applicant to continue his profession. Therefore, the Commissioner ought to have construed the partial permanent disability at 100% and there is defect in appreciation of evidence and the assessment of compensation, therefore, requires rectification.

Sri A.V.K.S. Prasad, learned counsel for respondent No.2, would submit that the Schedule provided in the Act does not provide anything in regard to the nature of the disability sustained by the injured to treat it as 100% disability. It is his submission that there is no amputation of any of the limbs and it is only restriction which would have been even recovered over a period on account of physiotherapy, in case physiotherapy was resorted to. Thus, he resisted the request of the appellant.

It is true, when there is nothing provided under the statute and when there is no amputation of any of the limbs, certainly, the restriction of terminal 20 degrees of proximal right knee joint cannot be viewed as effecting 100% disability so as to disable the petitioner from continuing the profession. In such an event, it is desirable only to enhance the partial permanent disability percentage treating it as 50% as against 30% considered by the Commissioner.

Therefore, by taking into consideration the wages, age and loss of earning capacity as 50% as against 30%, the amount of compensation is arrived at Rs.2,09,125/- (Rs.3,785/- x 60% x 184.17 x 50%), besides the stamp duty of Rs.251/- awarded by the

Commissioner. Thus, the appellant is entitled to a total sum of Rs.2,09,376/- towards compensation, as against Rs.1,25,726/- granted by the Commissioner, and the same is accordingly granted.

With the above modification, the present Civil Miscellaneous Appeal is allowed in part as indicated above. There shall be no order as to costs.

Miscellaneous petitions if any pending in the present appeal stand closed.

Dt: 11.06.2018
v v

JUSTICE A.SHANKAR NARAYANA

