HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1043 OF 2008

JUDGMENT:

The applicant is the appellant herein, who preferred the present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923, (for short, 'the Act') dissatisfied with the award of Rs.1,22,114/- granted as compensation for the injuries he sustained in the course of his employment on 18.7.2004.

2. The appellant-applicant laid the claim for grant of Rs.4,00,000/- (Rupees Four lakhs only).

3. Heard Sri A. Rajendra Babu, learned counsel for the appellant-applicant and Sri R.K. Suri, learned Standing Counsel for the 2nd respondent-Insurer.

4. The present Appeal is dismissed for default against respondent No.1, owner of the vehicle being the employer of the applicant, vide Court order dated 13.4.2016.

5. The submission of the learned counsel for the appellant is that the applicant sustained shortening of one inch of left lower limb and restriction of movements by 40% of left hip joint and the disability was assessed at 25% by the Medical Officers, examined as A.Ws.2 and 3, but when shortening of one inch of left lower limb, 100% loss of earning capacity ought to have been computed as the

appellant is the driver of vehicle, and, therefore, sought to grant balance amount.

6. Learned Standing Counsel for the 2nd respondent-Insurance Company would submit that it is a case where First Information Report, Charge-sheet and Accident Register are not produced and even the complaint was lodged one week after the accident by the cleaner, and, therefore, there is every reason to disbelieve the claim of the applicant and that the applicant is not entitled to enhancement.

7. There is clear finding recorded by the learned Commissioner that the evidence of A.W.2 shows shortening of one inch of left lower limb and restriction of movements by 40% of left hip joint and the strength of left lower limb is weakened and he cannot sit on the floor and cannot work as driver of the lorry, but, however, disability was assessed at 25% and loss of earning capacity of the applicant was also assessed at 25%, perhaps made the learned Commissioner to arrive at R.1,21,870/- besides stamp duty of Rs.244/-, totalling to Rs.1,22,114/-.

8. In the present case, shortening is only one inch of left lower limb, there may be difficulty in driving the vehicle but it is not a case of amputation of any portion of the limb.

9. Therefore, when kept in view, the inconvenience to which he has been subjected to loss of earning capacity is

assessed at 50% as against 25% considered by the Tribunal. Therefore, when 25% loss of earning capacity is enhanced to 50% the appellant-applicant becomes entitled to Rs.2,43,740/- (Rs.3,774/- x 60 /100 x 50/100 x 215.28), besides stamp duty of Rs.244/-, totalling to Rs.2,43,984/-.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.1,22,114-00 to Rs.2,43,984/-. 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. 14.06.2018
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