THE HON'BLE SMT. JUSTICE P. SREE SUDHA

C.M.A.No.629 of 2004

ORDER :

This appeal is filed by the appellant-United India Insurance Company Limited against the order dated 11.12.2003 in W.C.No.67 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad (for short 'the Assistant Commissioner').

The 1st respondent herein, who was employed as a driver with the 2nd respondent, met with an accident on 01.04.2003 and sustained grievous injuries. After considering the evidence on record, the Assistant Commissioner granted compensation of Rs.3,66,714/- along with interest at the rate of 9% per annum from the date of accident. Aggrieved by the same, the United India Insurance Company Limited preferred this appeal.

Learned counsel appearing for the appellant had contended that as per the medical evidence, the disability was assessed at 50%, but the Assistant Commissioner assessed the disability at 100%. AW.2 had issued Ex.A-5-Disability Certificate basing on the clinical and radiological examination. Thus, the evidence of AW.2 and Ex.A-5 ought to have been ignored by the Assistant Commissioner. The loss of earning capacity should not be more than what is assessed in the case of non-scheduled injuries. Thus, the Assistant Commissioner erred in calculating the loss of earning capacity of the claimant and awarding excess compensation.

As per the Memo dated 19.02.2004, the compensation amount of Rs.3,66,714/- was deposited under protest.

Learned counsel for the appellant had relied upon the judgment of this Court in C.M.A.No.626 of 2004, wherein it was observed that the Commissioner ought not to have assessed the loss of earning capacity of the applicant at 100% and at the most, it can be taken at 50%.

Learned counsel for the appellant further contended that in C.M.A.No.626 of 2004 the applicant is a Cleaner, but in the present case the applicant is a driver. As per the evidence of AW.2, the disability of the applicant was assessed at 50% on Mc. Bride Scale and it is stated that the applicant requires another operation for union of the fracture. He also stated that it is not possible for the applicant to drive the vehicle in his rest of life. He also stated that the applicant has irreversible permanent functional and anatomical deficit.

Admittedly, the claimant was a driver of the vehicle and he sustained fracture of shaft femur (left) and also lateral popletial nerve paralysis, as a result of nerve paralysis, he has a foot drop and there is a shortening of limb and the activities of daily living are badly affected because of the injuries sustained by him. There is no chance for him to recover and to discharge his duties as a driver as such. Therefore, the Assistant Commissioner had assessed the functional disability at 100% and awarded compensation of Rs.3,66,714/-.

Learned counsel for the appellant disputed Ex.A-5-Disability Certificate stating that the same was issued by AW.2 basing on the clinical and radiological examination.

This Court is of the considered view that if at all the appellant is not relying upon the evidence of AW.2 and Ex.A-5, it ought to have taken steps for referring the claimant to the Medical Board, but it failed to do so. Therefore, the argument of the learned counsel for the appellant before this Court regarding the evidence of AW.2 and Ex.A-5 is not tenable. Therefore, there is no error in assessing the disability sustained by the claimant at 100% by the Assistant Commissioner and thus, this Court finds no reason to interfere with the order dated 11.12.2003 in W.C.No.67 of 2003 passed by the Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad.

Accordingly, the C.M.A. is dismissed. No costs.

Learned counsel appearing for the respondents had contended that during pendency of these proceedings, respondents 1 and 3 died and there is only sole dependant i.e., the 4th respondent, who is the daughter of the deceased, aged about 25 years.

In view of the above submission, the 4th respondent is permitted to withdraw the entire amount. No costs.

Pending miscellaneous applications, if any, shall stand closed.

P. SREE SUDHA, J

Date: 04.01.2022
Prv

THE HON'BLE SMT. JUSTICE P. SREE SUDHA

C.M.A.No.629 of 2004

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Prv