

HON'BLE SMT JUSTICE P.SREE SUDHA

C.M.A.No.100 of 2006

O R D E R

1. This appeal is filed by the National Insurance Company against the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-II, in W.C.No.5 of 2004 dated 06.07.2005, whereunder the Commissioner granted compensation at Rs.2,23,490/- to the applicant.

2. The facts of the case are that the applicant therein, first respondent herein, was working as a Cleaner in DCM bearing No.AP 9W 6773 and while he is discharging his duties as such, the vehicle met with an accident on 24.10.2004, due to which the applicant sustained fracture to right femur along with other injuries and was admitted as inpatient in Gandhi Hospital and the applicant was aged about 40 years at the time of the accident. Thereafter, he filed the present petition seeking compensation. The Commissioner after adducing evidence and marking

exhibits noticed in the discharge card that his age was shows as 45 years, but he has not filed any date of birth certificate and his leg was shortened. The Commissioner relied upon the judgement of this Court in **RAYAPATI VENKATESWAR RAO V/s MANTAI SAMBASIVA**¹, holding to the effect that when once a workman is incapacitated and unable to perform his duties, even if the physical disability sustained is 20 to 25%, he may have a loss of earning capacity as 100%.

3. Heard both sides and perused the record.

4. Learned counsel for the appellant would contend that the disability certificate issued by the Medical Board shows the disability as 20% but the Commissioner awarded loss of earning capacity as 100%. He would further contend that the applicant has not even examined the doctor who issued the disability certificate.

5. No doubt, the applicant was a cleaner and he sustained injuries in the accident, but his disability was

¹ 2001 (1) ALD 435

assessed by the Medical Board as 20%. It is for the applicant to examine the doctor who issued disability certificate for arriving to the conclusion of assessing the loss of earning capacity. In this case, no such steps were made by the applicant-respondent. Therefore, the reliance upon the said citation in assessing excess compensation is not sustainable.

6. However, considering the nature of work, the age of the applicant at the time of the accident and the nature of injuries sustained by him, this Court finds it reasonable to take the loss of earning capacity as 40%. Therefore, the compensation would arrive at $2320.50 \times 60/100 \times 159.80 \times 40/100 = \text{Rs.}88,996/-$ plus Rs.1,000/- towards advocate fee. Thus, in all Rs.88,996/-.

7. It is to be noted that no interest was granted by the Commissioner. The applicant is entitled for interest at the rate of 12% per annum from the date of accident to the date of realisation in accordance with the decision of the Supreme Court in the case of **SABERABIBI YAKUBBHAI**

SHAIKH V/s NATIONAL INSURANCE COMPANY². As the deposits were already made by the insurance company in accordance with the general practice, the applicant would be entitled for interest thereon from the date of accident to the date of such deposit.

8. Accordingly, this appeal is allowed in part reducing the compensation awarded by the learned Commissioner. There shall be no order as to costs.

9. Miscellaneous Petitions, if any, pending in this appeal shall stand closed in the light of this final order.

JUSTICE P.SREE SUDHA

7TH MARCH, 2022.

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² 2014 (2) SCC 298