

HON'BLE SMT. JUSTICE P.SREE SUDHA
CIVIL MISCELLANEOUS APPEAL No.834 of 2005

O R D E R

1. This appeal is filed by National Insurance Company Limited against the order dated 09.05.2005 passed by the Assistant Labour Commissioner-I at Hyderabad in W.C.No.190 of 2004.
2. The driver of the vehicle bearing No.AP28T7072 met with an accident on 08.06.2001 and sustained grievous injuries. The applicant claimed compensation of Rs.4,00,000/- and the Assistant Commissioner after considering the evidence on record granted compensation of Rs.4,08,165/- with interest at 9% per annum from the date of filing the application i.e., 07.07.2004.
3. The appellant preferred this appeal by contending that the loss of earning capacity was wrongly estimated at 100% although the doctor A.W.-1 estimated the Permanent Partial Disability to be at 60% and gave the disability certificate under Ex.A-10. The appellant further contended that the injuries sustained do not fall within the injuries mentioned under Schedule-I of the Workmen Compensation Act. Hence, the claim ought to have been considered under Section 4(1)(c)(ii) of the Act. As per this provision, production of the certificate concerning the loss of earning capacity issued by qualified medical practitioner is mandatory before computing the compensation payable to the injured workman. The appellant would also contend that the Assistant Commissioner erred in awarding compensation of an amount higher than the claim amount. Learned counsel for the appellant would rely upon the case law reported in **NEW INDIA**

ASSURANCE COMPANY LIMITED V/s. SAMMAIAH @ M.SHANKAR¹ to the effect that failure to follow the rule of procedure prescribed by the statute tantamount to error of law and error of jurisdiction, **S.S.PATIL V/s. E.B.BHAVIHALA²** in which it was held that the determination of loss of earning capacity has to be made with reference to 'all work' the workman was capable of performing at the time of accident. Learned counsel for the appellant also relied upon a decision of this Court in **UNITED INDIA INSURANCE COMPANY V/s. R.RAJENDER REDDY³** holding to the effect that the evidence of Dr.G.Subhash Rao should be eschewed as he is a stock witness in all the cases under the Workmen Compensation Act. In the said judgement, the loss of earning capacity was also altered to 60% instead of 80% as determined by the said doctor and the matter was remanded for recalculation. He would further assert that the evidence of the Doctor-G.Subhash Rao cannot be considered as he never treated the applicant and he deposed in number of cases. He is a stock witness and not competent to issue disability certificate when there is a medical board constituted for the said purpose.

4. This appeal pertains to the year 2005. During that period the evidence of the medical practitioner was recorded in the Court. As such learned counsel appearing for the petitioners were taking the assistance of the doctors who were ready and willing to depose before the courts. Presently, the Advocate-Commissioners are appointing to record the cross-examination of the doctors. Therefore, they need not appear before the courts and thus the doctors who treated the claimant are examined before the Court.

¹ 1995 (3) ALT 470

² 2004 ACJ 333

³ CMA No.2 OF 2017 decided on 31.03.2021

5. In the case on hand, the perusal of the record would show the that applicant was a driver and he sustained the following injuries. 1) posterior dislocation of right hip, 2) rupture of the anterior and posterior cruciate ligaments, 3) fracture of right tibial plateau, 4) fracture of right-side sacrum and 5) right sciatic nerve injury. No doubt, Dr. G.Subhash Rao has not treated the applicant but he also noticed 1) stiffness of the right hip with decreased range of movements in all directions, 2) unstable right knee due to rupture of ligaments because of which the applicant might fall while walking, 3) the applicant cannot sit and squat and cannot walk for long distance and he cannot drive a vehicle in future because of the unstable right knee. The Doctor estimated the partial permanent disability at 60% and also issued Ex.A-10-disability certificate. The Assistant Commissioner also observed that the applicant was unable to walk without a stick and he could not sit and squat. The learned Assistant Commissioner extracted the definition of 'total disablement' from Section 2(1)(l) and amount of compensation to be granted from Section 4(1)(b) and also observed that the disablement of the applicant has to be assessed *keeping in view the nature of job the applicant was doing* and thus assessed the loss of earning capacity at 100%. The Assistant Commissioner after considering medical evidence is at liberty to assess the functional disability and arrive to the conclusion of loss of earning capacity and hence, considering the fact that the applicant was a driver and was not able to sit and squat, he rightly assessed the loss of earning capacity at 100%.

7. Learned counsel for the appellant would also contend that the trial Court granted more compensation than the claim amount. But

the Tribunals are at liberty to grant a just compensation. The Assistant Commissioner only granted Rs.8,165/- more than the compensation claimed and it cannot be considered as arbitrary, and therefore, it needs no interference.

8. Therefore, I do not find any irregularity or illegality in the order of the Assistant Commissioner dated 09.05.2005.

9. With regard to interest, learned counsel for the applicant relied upon a decision of the Hon'ble Supreme Court in **SABERABIBI YAKUBBHAI SHAIK V/s. NATIONAL INSURANCE COMPANY LIMITED**⁴. As per the said judgement, the applicant is entitled to interest at 12% from the date of the accident.

10. In the light of the above discussion, this appeal is dismissed confirming the order dated 09.05.2005 in W.C.No.190 of 2004. The appellant is directed to deposit the balance of interest at the rate of 12% per annum within one month from the date of the order. On such deposit, the applicant is at liberty to withdraw the entire amount.

11. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

P.SREE SUDHA, J.

09th FEBRUARY, 2022.

PGS

⁴ (2014) 2 SCC 298