

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.893 of 2009

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against order dated 26.09.2007 in W.C.No.174 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad (hereinafter referred to as 'the Commissioner'), whereunder, the claim of respondent No.1 herein for payment of compensation to injuries sustained in the accident was partly allowed awarding compensation of Rs.1,52,384/- which includes stamp fee and advocate fee. Aggrieved by the same, the present appeal is filed at the instance of insurance company i.e., opposite party No.2 in the proceedings before the Commissioner.

2. The case of the appellant is that the claim is laid for compensation for injuries sustained in the accident which occurred on account of collusion between two vehicles on 03.06.2004. According to the appellant, the doctor who examined the injured/ respondent No.1 herein fixed disability of only 30 to 35 %. Whereas, the Commissioner has taken loss of earnings 50% which is contrary to the disability determined by the medical expert, who

was examined as A.W.2. Therefore, according to appellant such findings of the Commissioner suffer from perversity.

3. None appeared and there is no representation from the respondents.

4. The substantial question of law emerging for consideration before this Court is as follows:

“Whether the findings of the Commissioner in determining the loss of earnings as 50 % for the injuries sustained by the cleaner when there is evidence of medical officer determining the physical disability as 30 to 35 %, suffer from any perversity, so as to give rise to substantial question of law?”

Substantial question of law:-

5. The facts of the case and the evidence on record show that there is no dispute with regard to accident and injuries sustained by respondent No.1 herein. It is not in dispute that respondent No.1 was cleaner on the vehicle. At the time of accident the vehicle was covered under the insurance policy issued by the appellant. It is also not in dispute that the doctor, who was examined as A.W.2 has issued disability certificate under Ex.A-8. The evidence of A.W.2 shows that on account of head injury, there is an impact on one of the eye of the victim and vision of eye was lost. However, he opined that there may be chance of regaining the vision, if

appropriate treatment is given to the victim. Apart from the head injury, respondent No.1 suffered from other injuries also.

6. As per Schedule-I at Sl.No.25 of the Workmen's Compensation Act, 1923, for loss of one eye without any complication to other eye, 40% loss of earning is prescribed. In the present case, there is loss of vision for one eye and other eye being normal. Apart from loss of vision of one eye, respondent No.1 also sustained head injury and injuries to limbs. Considering all the said injuries together, the Commissioner determined loss of earnings at 50%, which is in accordance with evidence on record. Such findings do not suffer from any perversity and requires no interference.

7. In the result, the civil miscellaneous appeal is dismissed confirming the order dated 26.09.2007 in W.C.No.174 of 2004 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-III, Hyderabad. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 04.01.2023
GVR