

THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL No.973 of 2008

JUDGMENT:

1. The present civil miscellaneous appeal has been directed against order dated 26.09.2007 in W.C.No.173 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 was partly allowed awarding compensation of Rs.2,74,719/- 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 Commissioner has fixed 70% towards loss of earnings when the doctor has given the physical disability certificate for 55 to 60 % and no reasons have been given by the Commissioner for ignoring the determination of physical disability by the doctor. The loss of earnings assessed by the Commissioner is excess and such findings suffer from perversity giving rise to substantial question of law.

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 treating the loss of earnings as 70 % for the injuries sustained by the driver ignoring the physical disability determined by the doctor 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 demonstrate that respondent No.1 herein is victim and claimant. He was driver of the vehicle which was insured with the appellant herein. It is not in dispute that the vehicle is insured and policy was in existence. It is also not in dispute that respondent No.1 suffered from head injury, restriction of right shoulder movements and heaviness of left lower limb and impairment of memory. Respondent No.1 was initially admitted in Government hospital and later, he was treated in NIMS, Hyderabad. Subsequently, he was treated in other private hospitals also.

6. In order to prove the injuries and disability, respondent No.1 relied upon evidence of A.W.2, Dr. K.V. Surya Prakash, who issued

disability certificate under Ex.A-6. The oral evidence of the doctor shows that there was impairment of memory on account of head injury, there was restricted movement of right shoulder and heaviness of left lower limb. In view of the said injuries, the physical disability was determined from 55 to 60%.

7. The injuries sustained by respondent No.1 are not scheduled injuries. The disability was determined basing on the impairment of memory, restricted movement of right shoulder and heaviness of left lower limb. Admittedly, lower and upper limbs play vital role in driving of vehicle. Further, impairment of memory also disables the driver to drive a vehicle. The evidence of the doctor shows that there was total loss of earnings on account of cumulative physical disability determined by him, which was assessed as 55 to 60 %.

8. The loss of earnings may be proportionate or less to physical disability, if the impact of physical disability is on the functional disability of body and the resultant effect on performance of his professional and normal duties. There may be situation where the physical disability and earning disability may not be proportionate and it may be more, due to impact of functional disability on earning disability.

9. In the present case, the doctor's evidence demonstrates that there is impairment of memory and memory is necessary requirement for driver to drive heavy and commercial vehicles. The lower and upper limbs also suffered from physical disability. Though, physical disability is 55 to 60 %, the evidence of the doctor supported that earning disability is total. Still, the Commissioner did not accept the complete loss of earnings, but restricted loss of earnings to 70%, which according to this Court is very reasonable. Such findings do not suffer from any perversity and the appeal is liable to be dismissed.

10. In the result, the civil miscellaneous appeal is dismissed confirming the order dated 26.09.2007 in W.C.No.173 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