

THE HON'BLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS APPEAL Nos.885 of 2007 AND 1411
of 2011

COMMON JUDGMENT:

1. This common judgment disposes of both the Civil Miscellaneous Appeals.

2. The Civil Miscellaneous Appeals are arising out of same Order dated 13.07.2007 in W.C.No.113 of 2005 on the file of the Court of learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, RTC Cross roads, at Hyderabad where under, the claim of the injured was partly allowed granting compensation of Rs.1,09,246/- with interest by holding the opposite party Nos.1 and 2, jointly and severally liable to pay compensation. Aggrieved by the same the applicant-claimant filed C.M.A.No.885 of 2007 seeking enhancement of compensation and the National Insurance Company Limited, who was the opposite party No.2 filed C.M.A.No.1411 of 2011, assailing the fixation of liability on the Insurance Company.

3. Heard.

4. The challenge of the applicant-claimant in C.M.A.No.885 of 2007 is with regard to his loss of earning capacity, keeping in

view the nature of physical disability sustained by him. The Doctor determined the physical disability of the claimant as 20% on account of which, the applicant was completely deprived of his earning capacity. He is unable to perform his regular duties as a labour, as he was performing prior to the accident. According to him, the loss of earnings requires to be enhanced.

5. The case of the Insurance Company in C.M.A.No.1411 of 2011 is that, the loss of earning capacity of the applicant, as determined by the Commissioner, is not in proportion to the physical disability determined by the Doctor. The further contention of the Insurance Company is that, the policy is a comprehensive one covering third party liability as well as liability for damage caused to vehicle. But there is no coverage to the labour by paying additional premium and the insurance company is not liable to pay compensation.

6. On a scrutiny of the medical evidence of the Doctor, who was AW2, the applicant-claimant had suffered fracture of pelvis and this is the only factor which was the basis and foundation for determination of 20% disability by the Doctor, who issued disability certificate. It is a fact that he was not the Doctor, who treated the applicant. But the Commissioner has taken into

consideration, the disability vis-à-vis the profession of the injured claimant and found that there is a loss of earnings of 35%. Such a finding of the Commissioner is based on factual aspects available on record and the same is proved with medical evidence. Such a finding do not suffer from perversity and the interference from this Court is not required.

7. The contention of the insurance company with regard to liability is that, admittedly, in the present case, there is another claim arising out of the same accident viz., C.M.A.No.1419 of 2011 and he was also a labour travelling in the vehicle. In the present case also the applicant was travelling as a labour. The Insurance Company challenged the award in C.M.A.No.1419 of 2011 and the Appeal was closed as the Insurance Company admitted its liability. When such is the admission, the applicant is similarly placed and the insurance company cannot take two stands in a similar policy. Therefore, the Appeal viz., C.M.A.No.1411 of 2011 is devoid of merit and liable to be dismissed. In the said circumstances, the Appeal viz., C.M.A.No.885 of 2007 is allowed.

8. In the result, Civil Miscellaneous Appeal No.885 of 2007 is allowed; the Civil Miscellaneous Appeal No. 1411 of 2011 is dismissed. No costs.

Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE M.LAXMAN

11.01.2023
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C.M.A.Nos.885 of 2007 and 1411 of 2011

Dated: 11.01.2023

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