

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 6TH DAY OF JANUARY, 1998

BEFORE

THE HON'BLE MR..JUSTICE CHIDANANDA ULLAL

M.F.A.NO. 291/1994.

Between :

The Oriental Insurance Co.
Ltd., having their Regd.Office
at 'Oriental House', Asaf Ali
Road, New Delhi,

and its Regional Office at
Leo Shopping Complex,
No. 44/45, Residency road,
Bangalore - 25 by their
Regional Manager.

.. APPELLANT

(By Sri.M.Sowri Raju for applt.)

A n d :

1. Sri. Shanmukha, s/o.
Channabasappa, Hindu,
Male, Adult, C/o S.B.
Raghunandan, LIC 307,
Kuvempunagar, Hassan.

2. Sri. K.C.Puttasiddappa,
c/o. Channabasappa,
Hindu, male, adult,
R/o. Hunsinakere road,
Hassan - 573 201.

.. RESPONDENTS

(By Sri. Ashok Harnahally for R.1
and Sri. G.Lakshmeesh Rao for R.2.)

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This MFA is filed u/s. 30 of the Workmen's
Compensation Act, against the judgment dt. 25-6-93
in WCA.SR.8/90 passed by the Commr. for Workmen's
Compensation, Hassan Dist., Hassan, partly allowing
the claim petition for compensation.

This MFA coming on for hearing this day, the
Court delivered the following :

J U D G M E N T

This appeal is directed against the order dt. 25-6-93 in case No. WCA/SR.8/90 passed by the [✓] *Learned officer and* Commissioner for Workmen's Compensation, Hassan District, Hassan. In passing the same, the Commissioner for Workmen's Compensation (hereinafter referred to as the Commissioner for short) had awarded Rs.1,09,235/- as the compensation together with levy of interest at 6% p.a. from the date of award to the date of realisation.

2. I heard the learned Counsel for the appellant Sri. M.Sowri Raju and the learned Counsel for the respondent No. 1 Sri. Ashok Haranahally. The respondent No. 2 is represented by Sri. G.Lakshmeesh Rao and he is not present before Court.

3. The learned Counsel for the appellant while taking me through the background of the case and further the impugned order under challenge argued that even according to the showing of the respondent No. 1, the total disability suffered by him was only to an extent of 5%. The said part of the evidence is in Ex.P.7 wherein the doctor who was stated to have treated the respondent No. 1 had issued a certificate on 2-12-92 and the same reads as hereunder :



"This is to certify that Sri. Shanmukha, s/o. Sri. Channabasappa, a native of Hassan had an accident on 3-2-90 as a result of which he had cerebral concussion, for which he was under my treatment. Now two years after the accident he has residual Neurological Deficit as an aftermath of cerebral concussion. The disability is unlikely to improve or clear at this stage. I feel the disability is about five per cent."

4. While relying upon the very piece of evidence produced by the respondent No. 1 as above, Sri. Sowri Raju argued that it was totally erroneous on the part of the Commissioner to award a sum of Rs.1,09,235/-. According to Sri. Sowri Raju, the compensation would have been Rs.5,461.75. That again he had shown by working out the manner in which the Commissioner had worked out in the impugned order under challenge. It is also the submission of Sri. Sowri Raju that the Commissioner had awarded ~~a~~ totally inflated compensation to a tune of Rs.1,09,235/- as against the just and proper compensation awardable at Rs.5,461.75. Therefore, Sri. Sowri Raju prayed that the impugned order be held good to be modified to the figure from the above compensation of Rs.1.09,235/- to Rs.5,461.75.

5. The learned Counsel for the respondent No. 1 Sri. Ashok Haranahally while supporting the impugned award passed by the Commissioner argued that the award of compensation was just and proper



and the same is not called for to be interfered with. He further argued that in the event if this Court were to interfere with the same, this Court be pleased to remand the matter to the Commissioner below for de novo enquiry.

6. In the light of the above submissions made by the respective side, I have perused the impugned order under challenge as well as the records of the appeal.

7. As pointed out by Sri. Sowri Raju, it is in the evidence in Ex.P.7 produced by the respondent No. 1 before the authority below that the permanent disability suffered by him was only to an extent of 5%. As against the said material evidence on record, the Commissioner had taken the loss of earning capacity as total and therefore awarded the above sum by way of compensation. But on evidence as pointed out by Sri.Sowri Raju, the disability has to be taken to an extent of 5% and if that is reckoned as the loss of earning capacity of the respondent No. 1, the sum awardable by the Commissioner appears to be only Rs.5,461.75 and at any stretch of imagination cannot be Rs.1,09,235/-. All the more, the doctor who had given the Medical Certificate had also not been examined by the respondent - claimant.



8. In that view of the matter, I find merit in the instant appeal before this Court. Therefore, the compensation of Rs.1,09,235/- awarded by the Commissioner in the impugned ~~order~~^{award} is modified and the same is hereby held good for awarding a compensation of Rs.5,461.75 and nothing beyond, but with interest at 6% p.a. as granted by the Commissioner below.

9. The appeal therefore succeeds and accordingly allowed in part.

10. The appellant is directed to deposit the said sum before the Authority below within a period of 8 weeks if it had not deposited any sum as against the award made earlier by the Authority.

11. The appellant - Insurance Co. is at liberty to withdraw any sum beyond what they are liable to pay with the appeal herein allowed in part, if it had since deposited the entire sum together with interest in terms of the award under challenge.

sd/-
Judge

mgn/-