

N.Sree Ramulu and Others. Vs. B.Lakshmi Narayana (Died) and Others

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Court : Andhra Pradesh

Decided On : Apr-24-2013

Judge : M.S.RAMACHANDRA RAO

Appellant : N.Sree Ramulu and Others.

Respondent : B.Lakshmi Narayana (Died) and Others

Judgement :

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO C.M.A.Nos.856 of 2003 and Batch 24.04.2013 N.Sree Ramulu and others. B.Lakshmi Narayana (died) and others HEAD NOTE: Counsel for the Appellants : Sri N.Subba Rao and others. Counsel for the respondents: Sri T.Sree Ramulu and others ?Cases referred:

1. AIR 197.S.C

2. 2007 (4) ALT 60.(D.B.

2001. (1) ALD 42.4 2001 (1) ALD 43.5 2002 ACJ 139.6 2000 (1) ALD 55.7 1995 (3) ALD 110.8 APLJ 199 (2

9. 1997 ACJ 114.10 1996 ACJ 125.112004 (6) ALD 53.121995 (1) ALD 20.(2

2001. (3) ALD 17.14 2008 (3) ALD 65.(DB) 15 (2008) 8 S.C.C 51.16 2006 (4) ALD 39.1

1. SCC 34.18 (2010) 13 S.C.C

19. (2010) 10 S.C.C

20. (2010) 10 S.C.C

21. (2008) 9 S.C.C

22. (2007) 2 SCC 34.23 C.M.A.No.1256 o

24. (2009) 6 SCC 28.25 (2012) 2 SCC 267.C.M.A.Nos.856, 1210 & 2274 of 2001, 335, 550, 1685, 2380 & 3406 of 2002 & 2197 of 2003 COMMON

JUDGMENT

: Heard Sri N.Subba Rao, learned counsel for the petitioners in C.M.A.Nos.1210 of 2001, 335 of 2002, 550 of 2002, 1685 o

2274. of 2001, 3406 of 2002 and 2197 of 2003, Smt.A.Malathi, learned counsel for the petitioner in C.M.A.No.2380 of 2002, Sri T.S.Rayalu, learned counsel for the petitioner in C.M.A.No.856 of 2001 and Sri T.Ramulu, learned counsel for the respondents in C.M.A.Nos.1210 of 2001, Smt. V.Sujatha, learned counsel for the respondent in C.M.A.No.335 of 2002, Smt. M.Seetha Devi, learned counsel for the respondent in

C.M.A.No.550 of 2002, Sri A.V.K.S.Prasad, learned counsel for the respondent in C.M.A.No.856 of 2001 and 1685 of 2002, Sri R.Venkat Rao, learned counsel for the respondents in C.M.A.No.2274 of 2001, Sri J.Janakirami Reddy, learned counsel for the respondent in C.M.A.No.2380 of 2002, B.Devanand, learned counsel for the respondent in C.M.A.No.3406 of 2002 and Sri Srinivasa Rao Vutla, learned counsel for the respondent in C.M.A.No.2197 of 2003.

2. In all these cases, a common question of law arises for consideration and so they are being disposed of by a common order with the consent of the counsel for both sides.

3. The question which arises for consideration in these appeals is: "Having regard to the nature of the injury suffered by the claimants in these cases, whether the Commissioner for Workmen's Compensation erred in not holding that the claimants should be deemed to have suffered "total disablement" as defined in Section 2(1) (l) of the Workmen's Compensation Act, 1923 (presently known as the Employees' Compensation Act, 1923) (for short "the Act") and award compensation to them on the said basis?" 4. Except in C.M.A.2380 of 2002 where the Insurance Company is the appellant, in all the other cases, the injured/claimant is the appellant.

5. It is the contention of the counsel for the claimants in the above appeals that considering the nature of employment which the claimants were having at the time of the accident, the injuries suffered by them have disabled them from performing the said employment; merely because there is a theoretical possibility that they may perform other jobs, they cannot be said to be suffering from 'permanent partial disablement'; they ought to be considered as suffering from 'total disablement' as defined under S.2(1) (l) of the Act; the medical opinion is only confined to the physical disability suffered by them and cannot be taken to be a measure of the percentage of loss of their earning capacity; whatever may be the percentage of disability opined by the medical practitioner examined before the Commissioner, in view of their inability to perform the employment/job which they were doing at the time of the accident causing the injury, they should be treated as having suffered 100% loss of earning capacity; and the impugned orders where the Commissioner has taken a view that the degree of disability suffered by them has not caused 100% loss of earning capacity have to be set aside. The learned counsel for the claimants relied upon the following decisions: Pratap Narain Singh Deo Vs. Shrinivas Sabata and Another¹; New India Assurance Company Ltd., Secunderabad Vs. Abdul Khader Jilani @ Jilani and Another²; Ballari Rajendra Vs. G.Gurumurthy and Others³, Rayapati Venkateswar Rao Vs. Mantai Sambasiva Rao and Another⁴; G.Anjaneyulu Vs. Alla Seshi Reddy and Another⁵, Lingampalli Rajam (died) by LRs. Vs. Colliery Manager, Morgan's Pit Singareni Collieries Co., Ltd.⁶; New India Assurance Company Ltd., rep. by Divisional Manager, Hyderabad Vs. Kotam Appa Rao and another⁷; The National Insurance Co. Ltd., Vs. Mohd Saleem Khan and Another⁸; Executive Engineer, Public Works Department and Another Vs. Bhimrao Manikrao Unhale⁹; Hanumantha Gowda Vs. Devaraju¹⁰; Gorla Obula Reddy Vs. K.Rajgopal Reddy and Another¹¹; Janatha Modern Rice Mills Vs. G.Satyanarayana¹²; National Insurance Company Ltd. Vs. Rajesh Helmandge and Another¹³; Pamarthi Subba Rao Vs. H.Rama Rao and Another¹⁴; K.Janardhan Vs. United India Insurance Company Limited and Another¹⁵; National Insurance Company Limited, Ananthapur Vs. D.Sivasankar and Another¹⁶; Raj Kumar Vs. Ajay Kumar and Another¹⁷; S.Suresh Vs. Oriental Insurance Company Limited and Another¹⁸; and Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited and Another¹⁹.

6. The counsel for the 1st respondent in C.M.A.2380 of 2002 i.e., the claimant in the W.C.44 of 1999 adopted the above submissions.

7. On the other hand, the learned counsel for the respondents/ Insurance Companies however contended that the percentage of physical disability is no doubt different from the percentage of loss of earning capacity; that the Commissioner is bound to grant relief on the basis of the medical evidence on record; in assessing the loss of earning capacity in cases relating to injuries which are not specified in Schedule-I of the Act, Explanation II in S.4 mandates that the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule-I; therefore, the

Commissioner cannot grant relief to the claimants taking a higher percentage as loss of earning capacity where the medical practitioner has indicated a particular percentage of physical disability; merely because the claimants are unable to perform the work which they were doing when the accident occurred, it cannot be said that they have suffered 'total disablement' as defined u/s.2(1) (l) of the Act; if they are capable of performing any other work, it can only be construed as 'partial disablement' as defined u/s.2(1) (g) of the Act; and therefore C.M.A.No.2380 of 2002 has to be allowed and the other C.M.As. be dismissed. The learned counsel for the Insurance Companies relied upon the following decisions: Palraj Vs Divisional Controller, NEKRTC20; Ramprasad Balmiki Vs. Anil Kumar Jain and Others²¹; National insurance Co. Ltd. v. Mubasir Ahmed and another ²²; and M/s.United India Insurance Company Limited Vs. B.Srinivas and Another²³.

8. Before dealing with the contentions of the parties, it is appropriate to consider the relevant provisions of the Act .

9. Section 2 (1) (g) of Act stated as follows: "2 (g). "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a employee in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement;" 10. Section 2 (l) of the Act: "Sec.2(l): "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a employee for all work which he was capable of performing at the time of the accident resulting in such disablement: Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more; 11. Section 4 (as it stood at the relevant time prior to it's amendment by Act.No.45 of 2009) enacts: "4. Amount of compensation. - (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: (a) where death results from the injury an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees, whichever is more; (b) where permanent total disablement results from injury an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of ninety thousand rupees, whichever is more; Explanation I - For the purposes of Clause (a) and Clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Sch. IV against the entry in the first column of the schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due; Explanation II - Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be four thousand rupees only. (c) where permanent partial disablement results from the injury (i) in the case of an injury specified in Pt. II of Sch. I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by the injury; and (ii) in the case of an injury not specified in Sch. I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury; Explanation I - Where more, injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries. Explanation II - In assessing the loss of earning capacity for the purposes Sub- clause (ii), of the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Sch. I; 12. These provisions have been interpreted in several decisions of the Supreme Court and High Courts apart from this Court. To the extent considered relevant, the following decisions are considered.

13. In Pratap Narain Singh Deo (1 supra), a carpenter doing some ornamental work in a cinema hall fell down

and suffered injuries resulting in amputation of his left arm from the elbow. He claimed compensation under the Workmen's Compensation Act, 1923. The Commissioner held that the injury had resulted in amputation of the left-arm of the workman/respondent above the elbow and as he was a carpenter by profession, by loss of his left hand above the elbow he was evidently rendered unfit for the work of a carpenter as the work of carpentry cannot be done by one hand only. He therefore adjudged him to have lost 100% of his earning capacity. Challenging the same the appellant/employer filed writ petition in the High Court of Orissa which was dismissed. He approached the Supreme Court. It was contended by the employer before the Supreme Court that the injury did not result in permanent total disablement of the respondent and that the Commissioner committed a grave error of law in taking that view and that there was only partial disablement within the meaning of Section 2(1)(g) of the Act which should have been deemed to have resulted in permanent partial disablement of the nature referred to in Item 3 of Part II of Schedule I of the Act. This argument was advanced on the ground that amputation was from eight inches from the tip of acromion and less than four-and-a-half inches below the tip of olecranon. The Supreme Court rejected this contention of the appellant. It held that the Commissioner had examined the question whether the disablement incapacitated the respondent-workman for all work which he was capable of performing at the time of the accident; he had recorded a finding that the workman being a carpenter by profession, the loss of the left hand above the elbow had rendered the workman unfit for the work of a carpenter as the work of carpentry cannot be done by one hand only; and this finding of the Commissioner was a reasonable and correct finding. It also held that there was no justification for the other argument advanced by the employer with reference to Item 3 of Part II of Schedule I because it was not the case of the employer before the Commissioner that amputation of the arm of the workman was from eight inches from the tip of acromion to less than four-and-a-half below the tip of olecranon, and a new case cannot be set up on facts which have not been admitted or established.

14. In *Mubasir Ahmed (22 supra)*, persons employed as labourer/cleaner and driver of a vehicle were involved in an accident and they claimed compensation from their employer in respect of personal injuries sustained by them in the course of their employment before the Commissioner for Workmen's Compensation. In order to prove the nature of injuries sustained and the alleged loss of earning capacity, they examined a doctor as a witness. The doctor who was examined indicated the percentage of permanent and temporary disablement, functional disability and loss of earning capacity as follows : Civil Appeal No.5623 of 2006 Permanent/partial disability - 65 per cent Functional disability - 65 per cent Loss of earning capacity - 80 per cent Civil Appeal No.5624 of 2006 Permanent/partial disability - 65 per cent Functional disability - 65 per cent Loss of earning capacity - 65 per cent Civil Appeal No.5625 of 2006 Permanent/partial disability - 65 per cent Functional disability - 70 per cent Loss of earning capacity - 80 per cent The Commissioner passed an award which was challenged by the Workman before the High Court. It held that there was 100% loss of earning capacity and awarded compensation on the said basis. Challenging the same, the Insurance Company preferred an appeal to the Supreme Court. The Supreme Court held that the case before it related to injuries which were not specified in Schedule I and such cases are covered by Section 4(1) (c) (ii) Explanation. In terms of the Explanation II, a qualified medical practitioner has to assess the loss of earning capacity having due regard to the percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provided that where there is more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded. It held that loss of earning capacity is not a substitute for percentage of physical disablement and is one of the factors taken into account; the doctor who examined the claimant also noted the functional disablement and had thus taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity and therefore, the decision of the High Court cannot be sustained. It set aside that part of the High Court's order and restored that of the Commissioner.

15. In *K. Janardhan (15 supra)*, the appellant before the Supreme Court was a tanker driver whose vehicle met with an accident with a tractor coming from the opposite side. As a result of the accident he suffered serious injuries resulting in amputation of his right leg up to the knee joint. The Commissioner for Workmen's Compensation held that he had suffered an amputation of his right leg up to the knee and therefore, can be

said to have suffered a loss of 100% of his earning capacity as a driver and it accordingly determined the compensation. On appeal to the High Court by the Insurance Company, the High Court accepted the plea that as per Schedule to the Workmen's Compensation Act, the loss of a leg on amputation resulted in 60% reduction in earning capacity and as the doctor in the case had opined that there was 65% disability, this figure has to be accepted. It accordingly reduced the compensation. Aggrieved thereby, the Workman approached the Supreme Court. The Supreme Court relying on Pratap Narain Singh Deo and held that the workman had suffered 100% disability and was incapacitated in earning his income as a tanker driver as his right leg had been amputated from the knee. It also took note of Section 8 and 9 of the Motor Vehicles Act, 1988, under which the workman would be disqualified from even getting a driving license. It allowed the appeal, set aside the judgment of the High Court and restored that of the Commissioner. This case indicates that even in the case of a scheduled injury, where the workman is unable to do the job which he was doing at the time of his employment, notwithstanding the prescription of the percentage of loss of earning capacity in the Schedule, the workman has to be treated as one who has suffered 'total disablement' under S.2(1)(I) of the Act and awarded compensation on the basis that he suffered 100% loss of earning capacity.

16. In Ramprasad Balmiki (21 supra), a case under the Motor Vehicles Act, 1988, the appellant before the Supreme Court who was working as a driver with the Cantonment Board, Gwalior, met with an accident when he was riding a two-wheeler which was hit by a tempo driven by the 1st respondent rashly and negligently. He sustained a fracture in his right femur bone as also tibia bone of his right leg. He underwent three operations and his right leg had to be shortened. He filed a claim petition under the Motor Vehicles Act, 1988. He was referred to the Civil Surgeon, Gwalior, for medical check-up and the said Civil Surgeon declared him unfit to drive a vehicle. Thereupon, an order of premature retirement from service on medical grounds was passed by the authorities of the Cantonment board. The Tribunal under the Motor Vehicle Act, 1988 held that he had not sustained any kind of permanent disability and was thus not entitled to any amount on that account. It also took note of the fact that after retirement the workman would receive pension and as there is no evidence as to whether he had any chance of promotion in future which had come to an end on account of the accident, he is not entitled to any compensation on the said count. As it was not established that the workman had been rendered completely disabled to do any work and as he would be getting pension after retirement, he cannot be granted any compensation on the basis of permanent disability. The High Court however enhanced the compensation on the ground that the workman suffered permanent disability of 40% and therefore, his loss of earning capacity is to the extent of 40%. Before the Supreme Court it was contended on behalf of the workman that the Tribunal and the High Court committed error as they did not take into consideration the fact that "total disablement" would mean "disablement from doing his job in which he was engaged" and strong reliance was placed in Pratap Narain Singh Deo (1 supra). The respondents before the Supreme Court however contended that in the absence of any statute or statutory rule or any other material, the functional disability would be the same as loss of earning capacity and in that view of the matter once the structured formula is applied for the purpose of computing the amount of compensation, what is relevant is not only the income earned by the workman but also the extent of purported disability suffered by him, and therefore, the judgment of the High Court did not warrant any interference. The Supreme Court dismissed the appeal of the workman on the ground that it was not a case where the Workmen's Compensation Act, 1923, was applicable; the jurisdiction of the Tribunal to make an award is confined to determination of the kind of compensation which appears to it to be just; the workman was guilty of suppression of facts and had not disclosed before the Tribunal the benefits to which he was found to be entitled to pursuant to the order of retirement on medical invalidation to enable it to arrive at a conclusion as regards the quantum of "just compensation"; it is not clear whether he had received any other or further amounts apart from the amount of pension or whether any of his dependents obtained an appointment on compassionate grounds on medical invalidation if there was such a scheme framed by the employer. It also observed that in Pratap Narain Singh Deo (1 supra), the Court had no occasion to consider the proviso appended to Section 2(1) (I) of the 1923 Act. The Court held that there exists a distinction between "total disablement" and "total permanent disablement" as contained in Schedule I Part I of the 1923 Act; sufferance of fracture of itself resulting in shortening of leg to some extent does not come within the purview of "permanent total disablement" even

under the 1923 Act; and that the High Court correctly proceeded on the assumption that the extent of permanent disability suffered by the workman is only 40% and not 100%. It referred to the decision in *Mubasir Ahmed and another* (22 supra) and held that the claim for obtaining 100% compensation for permanent disability must be supported by reasons.

17. In *Oriental Insurance Company v. Mohd. Nasir*²⁴, the Supreme Court reiterated that loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors to be taken into account. In that case, the claimant-driver of a vehicle suffered injury to his legs and was unable to make use of both his feet. He contended that he would not be in a position to drive the vehicle and furthermore would not be able to do any other work, and that he was incapable of any load on his body. No disability certificate was granted and he also admitted that he had not suffered any permanent disability. As the Chief Medical Officer stated that the claimant had only suffered 15% disability, the Supreme Court held that the extent of disability is only 15% and there was nothing on record to show that the qualified medical practitioner opined that there was a permanent and complete loss of use of his right leg or that he became totally unfit to work as a driver and that it is not correct to hold that the claimant suffered 100% loss of earning capacity.

18. In *Yadav Kumar* (19 supra), the appellant before the Supreme Court was a painter by profession; sustained injury in a road accident leading to fractures to his hand resulting in: (1) Deformity of right wrist. (2) Limitation of right wrist movements by 40%. (3) Limitation of right forearm movements by 30%. (4) Wasting of right forearm muscles by 3 cm. (5) Weak right hand grip. (6) Limitation of left wrist movement by 25%. (7) Tenderness over left wrist. (8) Instability of left in favour of radio-ulnar joint. (9) Weakness of left hand. The doctor who examined him opined that he cannot perform any hard work, cannot lift any weight and cannot perform any work smoothly. He opined that the disability of the appellant was 33% of right upper limb, 21% to left upper limb and 20% total disability of the whole body. He also stated that he cannot work as a painter and cannot do any other manual work also. He stated that even if the appellant continues his old vocation as a painter he has to do it with difficulty. When a claim was made before the Tribunal under the Motor Vehicles Act, it denied him compensation in the category of loss of future earnings (a category of pecuniary damages (Special damages) awarded in personal injury cases) in spite of recognizing the above percentage of disabilities. The appellant was held to have suffered 20% disablement and awarded compensation on the said basis by the Supreme Court under the head "loss of future earnings".

19. In *Palraj* (20 supra), the workman who was employed as bus driver in the KSRTC while driving a vehicle of that Corporation met with an accident. The medical officer who examined him came to the conclusion that he suffered 65% total body disability and 20% functional disability. The Commissioner under the Workmen's Compensation Act however took 85% functional disability as the basis for arriving at the compensation payable to the workman. It was admitted that on account of the injuries suffered by him, the workman was no longer able to drive a vehicle and the Corporation accordingly appointed him as peon where he was drawing the same salary. Challenging the award of the compensation, the Corporation filed an appeal in the High Court with regard to the percentage of disability taken by the Commissioner at 85% and contended that it was against the weight of medical evidence adduced in the case. The High Court allowed the appeal and held that the Commissioner had erroneously taken 85% as the extent of disability suffered by the workman and that the same ought to have been 20% instead. It therefore reduced the amount of compensation. The workman appealed to the Supreme Court contending that the doctors had certified that he was 100% disabled as far as functioning as a driver was concerned and that his total disability had been found to be 65% while his functional disability was assessed at 20%. The Supreme Court held at para-12 and 13 as follows : "12. While computing compensation for disabilities being suffered by a workman in the case of his employment, it is the functional disability resulting in loss of earning capacity which is the criteria which is followed in assessing compensation. The Workmen's Compensation Act, 1923, hereinafter referred to as "the 1923 Act", has its own formula in computing compensation on account of injuries suffered during employment which is reproduced in Schedule I to the said Act. In Part II of the said Schedule the loss of earning capacity in terms of percentage

has been directly related to the loss of any of the limbs and parts thereof, both of the upper limbs as also the lower limbs. Loss of earning capacity is commensurate to the injuries suffered and the loss of earning capacity as a result thereof.

13. In the instant case, it is no doubt true that the appellant has lost his capacity to function as a driver, but with the help of external aids his mobility has, to some extent, been restored and he is able to perform work which is suitable to his physical condition after the accident." It held that by virtue of the injuries suffered by the workman his disablement as far as driving of the vehicle is concerned is 100% but that is not the measure of loss of his earning capacity. It opined that the Commissioner appeared to have got confused between functional disability and permanent disability and erred in holding that loss of earning capacity was 85% and that the High Court had correctly set aside his order and assessed the loss of earning capacity as 20% instead of 85% and reduced the compensation. It also held at para - 16 as follows : "16. The aforesaid provision would indicate that where a workman suffers injury which is not specified in Schedule I to the Act, compensation is to be assessed on such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, permanently caused by the injury as assessed by a qualified medical practitioner. Since in the instant case, the nature of injury suffered by the appellant is not specified in Schedule I, the compensation has necessarily to be assessed on the basis of the loss of earning capacity caused by the injury which could amount to 100% disablement in a given case. In the instant case, however, although the appellant has lost the use of his legs for the purpose of driving a vehicle, which could be said to be total disablement so far as driving of a vehicle is concerned, he is in a position to earn a living other than by functioning as a driver, which, in fact, he is currently doing, having been posted as a peon by the respondent" Thus, the fact that the workman in the said case secured alternative appointment as a peon appears to have been one of the important considerations taken into account by the Court in sustaining the order of the High Court.

20. In *S. Suresh* (18 supra), the workman was a lorry driver and he met with an accident when driving a vehicle. He suffered serious injuries to his right leg, on the head and on other parts of the body. Although he survived ultimately, his right leg had to be completely amputated just below the knee. The doctor who treated him stated that he suffered 93% permanent disability in his right leg and that he will not be able to do the job of a driver or any other job because he will not be able to stand or walk without help. The Commissioner therefore held that he suffered a loss of 100% of earning capacity as a driver. On appeal by the Insurance Company, the High Court held that loss of the leg on amputation amounted to 50% reduction in the earning capacity; being an injury specified in Schedule I, medical opinion could not be relied upon in terms of Section 4(1)(c)(ii) of the Act. It applied the percentage of loss of earning capacity as specified in Part II of Schedule I and reduced the compensation by 50%. This was challenged in the Supreme Court by the workman. He contended that as he was a lorry driver, the loss of his right leg meant "total disablement" as understood in terms of Section 2(1)(l) of the Act and as such, the compensation payable to him had to be paid on that basis and relied upon the judgment in *Pratap Narain Singh Deo* (1 supra). The Supreme Court held following the said decision that on account of amputation of his right leg below the knee, he was rendered unfit for the work of a driver which he was performing at the time of the accident resulting in the said disablement and therefore, he should be held to have lost 100% of his earning capacity as a lorry driver. This case is thus similar to *K. Janardhan* (15 supra).

21. In *Raj Kumar* (17 supra), a case under the Motor Vehicles Act, 1988, the appellant before the Supreme Court was injured in a motor accident and sustained fracture of both bones of left leg and fracture of left radius. The Tribunal under the Act awarded compensation but the workman sought enhancement of the same in the High Court by way of an appeal which was rejected. He then approached the Supreme Court. While considering the assessment of future loss of earnings, which is a category of pecuniary damages awarded as special damages in personal injury cases, the Supreme Court held as follows : "8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing

at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency).

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties

attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

16. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.

19. We may now summarise the principles discussed above: (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability). (iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors." The Supreme Court on the facts of the case assessed the permanent functional disability of the body of the workman as 25% of the loss of future earning capacity as 20%.

22. It is clear from this decision that certain permanent disabilities may result in different percentages of loss in earning capacity in different persons, depending upon the nature of the profession, occupation or job, age, education and other factors.

23. In *Mohan Soni v. Ram Avtar Tomar and Others*²⁵, the appellant before the Supreme Court was a cart-puller. His four-wheeler cart was hit by a tanker being driven in a rash and negligent manner. His left leg was crushed and ultimately it had to be amputated below the knee. He made a claim for compensation under the provisions of Motor Vehicles Act contending that as a result of amputation of his leg he was no longer in a position to walk without support and he was therefore rendered incapable of doing any work and to earn his livelihood. Both the Tribunal and the High Court awarded compensation to the workmen taking his disability to 50% by referring to Schedule I of the Workmen's Compensation Act, 1923. The Supreme Court held : "8. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller." It followed the judgments in *Pratap Narain Singh Deo* (1 supra); *K. Janardhan* (15 supra); and *Raj Kumar* (17 supra) and held at para- 12 that the appellant used to earn his livelihood as a cart-puller and he was aged 55 years at the time of the accident and it would be impossible for him to find any job. It held : "12. It is noted above that the appellant used to earn his livelihood as a cart-puller. The Tribunal has found that at the time of the accident his age was 55 years. At that age it would be impossible for the appellant to find any job. From the trend of cross-examination it appears that an attempt was made to suggest that notwithstanding the loss of one leg the appellant could still do some work sitting down such as selling vegetables. It is all very well to theoretically talk about a cart-puller changing his work

and becoming a vegetable vendor. But the computation of compensation payable to a victim of motor accident who suffered some serious permanent disability resulting from the loss of a limb, etc. should not take into account such indeterminate factors.

13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income." It held that the loss of earning capacity of the appellant before it would be as high as 100% and would not be less than 90%. It, therefore, held that compensation for the loss of the appellant's future earnings must be computed on that basis.

24. In Abdul Khader Jilani (2 supra), a Division Bench of this Court considered the question whether the entries contained in Parts I and II of Schedule I of the Act are relevant for assessing the loss of earning capacity for non-Schedule injuries, particularly in the context of requirement under Explanation II to Section 4(1)(c)(ii) of the Act. The Court held that incapacity of a workman to do the particular work or every work has to be judged with reference to the work with which he was engaged or he was capable of doing at the time of accident; that there is nothing in the plain language of Section 4(1)(c)(ii) from which it can be inferred that in the case of an injury not specified in Schedule I, the compensation is to be paid keeping in view the entries contained in Parts I and II of Schedule I; and that those entries do not control the exercise of discretion of the competent authority in the matter of award of compensation which is required to be determined keeping in view the loss of earning capacity as assessed by the qualified medical practitioner. It considered the decisions in Pratap Narain Singh Deo (1 supra), Rajesh Helmandge (13 supra), Mohd. Saleem Khan (8 supra), Rayapati Venkateshwara Rao (4 supra) and Janata Modern Rice Mills (12 supra) and others and held that in the case of unspecified non-Scheduled injuries, the compensation is to be paid keeping in view the loss of earning capacity as assessed by the qualified medical practitioner and the quantum of compensation to be awarded to the workman will always depend on the assessment made by the qualified medical practitioner on the issue of loss of earning capacity of the workman.

25. In Pamarthi Subba Rao (14 supra), another Division Bench of this Court considered the issue whether a workman who suffered injuries in the course of employment not mentioned in Schedule I of the Act, becomes entitled to compensation on the basis of 100% disability. It considered the decisions in Gorla Obula Reddy (11 supra), Janata Modern Rice Mills (12 supra), Lingampalli Rajam (died) (6 supra), D. Sivasankar (16 supra), Abdul Khader Jilani (2 supra) and Pratap Narain Singh Deo (1 supra). It held as follows : "14. In our view, in case, the intention of the Legislature was to give benefit of total disablement only in case the workman suffered injuries mentioned either in Part-I or combination of injuries in Part-II of Schedule-I, as provided in the proviso to Section 2(1)(1) of the Act, perhaps, there was no necessity of Clause 2(1)(1) contemplating that, total disablement is, incapacity of the workman for performing the work which he was capable of performing at the time of the accident. It could have simply provided that total disablement would be only in case, the workman suffers injuries specified in Part-I or combination of injuries specified in Part-II of Schedule-II, as provided for in proviso to Section 2(1)(1).

24. In view of the various decisions referred in Jeelani's case (supra), as well as the Reference Order, as already referred by us, when on the basis of the medical evidence, 100% disability can be decided without the victim suffering any injuries specified in Schedule-I, on the medical officer certifying that the victim suffered 100% disability; there is no question of such benefit being not extended in the case of persons who suffered injuries which would definitely indicate total disablement to do the work, which the workman was capable of performing at the time of the accident. Only in cases where it would not be possible to decide 100% disability

without medical evidence or where the victim did not suffer sufficient injuries mentioned in Schedule-I, the question of relying on medical evidence would arise and when once that question can be decided without medical evidence, like of a case of amputation of leg of a driver, as in this case, there is no need of relying on medical evidence or on specified injuries.

25. The crucial question is not of specified injuries, but whether there was total disability to do the work, which the workman was doing at the time of the accident. The importance of medical evidence is only in case where such disablement cannot be decided without the aid of medical evidence and in case where the position can be decided with or without medical evidence like amputation of limbs, where a decision can be taken with regard to the working capacity of workman, the medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant. This point is amply clarified by the Division Bench in Jeelani's case (supra), wherein it was observed that the Court's discretion to award compensation is not controlled by the injuries contained in Parts - I and II of Schedule - I." 26. The following principles can be culled out from the above decisions of the Supreme Court and this Court: (a) All injuries or permanent disabilities arising from injuries do not result in loss of earning capacity. (b) Where permanent partial disablement results from an injury and the said injury is specified in Schedule I, it would be covered by Section 4(1)(c)(i) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; (c) Where permanent partial disablement results from an injury and the injury is not specified in Schedule I, it would be covered by Section 4(1)(c)(ii) of the Act. In such a case, the workman would be entitled to such percentage of compensation which would have been payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. (d) In assessing loss of earning capacity in a case of permanent partial disablement resulting from an injury not specified in the Schedule I, the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I. (e) The opinion of the medical practitioner as to the percentage of loss of earning capacity would be normally binding on the court where permanent partial disablement results from an injury not specified in Schedule I. (f) The importance of medical evidence is only in case where disablement in performing duties which the workman was performing earlier cannot be decided without the aid of medical evidence. In case where it can be so decided with or without medical evidence (like amputation of limbs), medical evidence is not relevant and the question of the victim not suffering specified injuries is also not relevant. (g) Loss of earning capacity is not a substitute for percentage of physical disablement and is only one of the factors taken into account. (h) The loss of earning capacity arising from a permanent disability may be different from the percentage of permanent disability. Equating the percentage of loss of earning capacity to the percentage of permanent disability would result in the award of either too low or too high a compensation. What requires to be assessed is the effect of permanent disability on the earning capacity of the injured. This involves ascertainment of what activities the claimant can carry on in spite of permanent disability and what he could not do as a result of the permanent disability; ascertainment of his avocation, profession and nature of work before the accident and also his age; and finding out whether he is totally disabled from earning any kind of livelihood (or) whether in spite of permanent disability, he can still effectively carry on the activities and functions, which he was earlier carrying on (or) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. In para.14 of Raj Kumar (17 supra) and in para.8 of Mohan Soni (25 supra) appropriate guidance is available. (i) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Commissioner/Court with reference to the evidence in entirety. (j) Where a claimant is a workman who suffered injuries in an accident and his employer either provides for pension after retiring the workman on the grounds of medical invalidation or the dependants of the claimant are given appointment on compassionate grounds, he has a duty to disclose these facts and they would have a material bearing on the

ascertainment of the percentage of loss of earning capacity. (k) It is a question of fact in each case whether there is permanent total disablement on account of the injuries suffered by the claimant. In a given case, the loss of earning capacity caused by an injury can amount to 100% disablement. But, if the injured claimant is in a position to earn a living by doing a job other than the one which he was doing at the time of his accident, he cannot be said to have suffered 100% disability. (l) Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganized sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income.

27. Keeping in view the above principles of law, we will now consider whether the Commissioner for Workmen's Compensation has correctly assessed the compensation payable to the claimants in each of these cases.

28. C.M.A.No.2197 of 2003 : In this case, the appellant suffered an accident on 10.06.2001 when he was driving a lorry of the 1st respondent resulting in the crushing of his right leg and fracture of his left leg. AW.II, the medical practitioner stated that the claimant suffered injuries to the right lower limb and fracture to both bones of left leg above knee; amputation was done for the right thigh and fixation was done for fracture of left leg; he is not fit for driving the vehicle; that partial permanent disability is 80% ; and loss of earning capacity is 100%. He also issued Ex.A.2-Medical certificate. The Commissioner however held that loss of earning capacity is only 80% and awarded compensation on the said basis. When the medical evidence is clear that the loss of earning capacity is 100%, the fact that the claimant who was employed as a lorry driver at the time of the accident is not fit for driving the vehicle in view of amputation on the right side above knee and malunion of the left leg, it has to be held that the loss of earning capacity is 100%. In my opinion, the Commissioner erred in granting compensation on the basis that loss of earning capacity of the claimant is only 80%. Therefore, the appeal is allowed and the order dt.01.04.2003 in W.C.No.51 of 2002 of the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour-I, Guntur is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

29. C.M.A.No.856 of 2001 : In this case the appellant/claimant, who was a driver of a lorry, sustained injuries to his right leg and his knee and hip were fractured. AW.2, the medical practitioner stated that there was injury to patella which was removed leaving a scar and the claimant also developed pruseel effusion. He stated that the claimant is having restricted movement at knee joint and loss of disability is 10% and that injury to patella is grievous injury. Although he became unfit to work as a driver, on the basis of medical evidence which indicated that he suffered 10% physical disability, the Commissioner held that the loss of earning capacity is also 10% and awarded compensation on the said basis. In equating the percentage of loss of earning capacity to the percentage of permanent disability, the Commissioner erred. As the claimant was working as a driver at the time of the accident and the finding of the Commissioner is that he is unfit to work as a driver, the Commissioner ought to have held that the loss of earning capacity is 100%. Therefore, the appeal is allowed and the order dt.04.12.2000 in W.C.No.279/97 of the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour-II Circle, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

30. C.M.A.No.3406 of 2002 : In this case also, the appellant/claimant was working as a lorry driver and suffered injuries in an accident which took place on 05.07.1997 while driving the vehicle owned by the 1st respondent. AW.1, a medical practitioner examined on behalf of the claimant stated that the claimant

suffered injuries to his left leg; there is infected sinus with skin grafting; there is bone thickening and deformity is present; sinus is discharging pus which indicates infection of the underlying bone; that the loss of physical function of the limb is 25-30%; and he is not fit for driving heavy goods vehicle. The Commissioner held that the loss of earning capacity of the claimant is 35% relying on the evidence of AW.1. The claimant who was working as a driver of a lorry at the time of the accident admittedly became unfit to drive a heavy goods vehicle in view of the injuries suffered by him. AW.1-the medical practitioner specifically referred to this fact in his evidence. Therefore, the Commissioner ought to have held that the claimant suffered 100% loss of earning capacity and awarded compensation to him on the said basis. Therefore, the order dt.18.02.2002 in W.C.No.17 of 1998 of the Commissioner for Workmen's Compensation cum Asst. Commissioner of Labour - I Circle, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

31. C.M.A.No.2380 of 2002 : This is an appeal by the Insurance Company challenging the award of the Commissioner granting compensation to the 1st respondent on the ground that there was 100% loss of earning capacity. The 1st respondent who was working as a lorry driver was involved in an accident on 09.05.1997 wherein both his legs were fractured. AW.2, the medical practitioner who treated him stated that the claimant was having fractured femur on both legs; surgery was done in right leg and right thigh by fixing plates and screws; grafting was also done; bone pieces were removed from right leg resulting in shortening of two inches of right lower limb; and there is 30% disability and he cannot work as a driver. The Commissioner took into account the fact that the claimant cannot work as a driver in view of the shortening of two inches of right lower limb and knee joint stiffness and so there is 100% loss of earning capacity. As the Commissioner rightly took into account the effect of disability suffered by the claimant on the earning capacity, I do not see any reason to interfere with his assessment of compensation. Therefore, the appeal is dismissed. No costs.

32. C.M.A.No.2274 of 2001 : This is an appeal filed by the injured claimant challenging the award of compensation by the Commissioner wherein the Commissioner awarded compensation on the basis that he suffered loss of earning capacity of 60%. The claimant was working as a car driver when he suffered an accident on 17.06.1997 causing injuries to his hands. AW.II, the medical practitioner stated that there were multiple fractures of both humers; he was given splint for both limbs; he underwent two operations; there is restriction of shoulder movement; and that there is also restriction of elbow on right side to the extent of at least 10 degrees. He also stated that he cannot work as a driver with these deformities and that the disability is 40%. The Commissioner while accepting that the claimant is unfit to work as a car driver held that the loss of earning capacity is 60% on the basis of his personal physical examination of the claimant and also taking into account the fact that the claimant had renewed his driving license and AW.II stated that the claimant can do light works other than driving. I do not find any error in the order of the Commissioner in the assessment of loss of earning capacity of the claimant as he considered the evidence of AW.II that the claimant can do works other than driving and the fact that the claimant had renewed his driving license suggesting that he would be able to drive in future. Therefore, the appeal is dismissed. No costs.

33. C.M.A.No.1685 of 2002 : The appellant/claimant was working as a lorry driver under the 1st respondent and suffered injuries in the course of his employment on 14.02.2001 while repairing the hydraulic lifts of the tipper at Sri Chakra Cement Factory crusher when the body of the tipper suddenly fell on his left hand which was crushed. AW.II, the medical practitioner stated that the left forearm and hand of the claimant were crushed; there is gross destruction of soft tissue and commutation of both bones of the forearm with vascular obstruction resulting in loss of vitality of forearm and hand; loss of earning capacity is 60%; he cannot work as lorry driver because he lost one hand; and it will also be difficult for him to do manual work jobs. The Commissioner assessed the loss of earning capacity of the claimant at 70% and awarded compensation on the said basis stating that the injury is a scheduled injury. In view of the fact that the claimant was employed as a driver and in view of the injury suffered by him in the accident he lost completely the vitality of the left forearm and hand disabling him from doing work as a lorry driver and also manual work, the Commissioner

ought to have held that the loss of earning capacity is 100%. Therefore, the appeal is allowed and the order dt.16.10.2001 in W.C.No.68 of 2001 of the Commissioner for Workmen's Compensation and Asst. Commissioner for Labour- I, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

34. C.M.A.No.335 of 2002 : The claimant/appellant was working as a lorry cleaner on the lorry of the 1st respondent and he received injuries on 11.06.2000 when he was covering the load on the lorry with a tarpaulin and fell down from the lorry on account of rain and sustained injuries to his right leg, left shoulder and multiple injuries all over his body. AW.2, the medical practitioner who treated him stated that the claimant suffered injuries of dislocation of left shoulder and left body of his scapula, 1, 2, 3 metatarsals of right foot and fracture of ulnar styloid right side of wrist apart from facial nerve palsy. He assessed the disability of the claimant at 45% and stated that he cannot work as lorry cleaner; he cannot walk properly as there is malunion in the foot on account of metatarsal fracture; he cannot hold objects with right hand because of stiffness of wrist; and cannot chew properly because of facial nerve palsy. The Commissioner assessed the loss of earning capacity at 45% and awarded compensation on the said basis. As the injuries suffered by the claimant in the accident are such that he can no longer work as a lorry cleaner, walk properly or walk long distances, cannot hold objects with right hand because of stiffness of wrist and also cannot chew properly because of facial nerve palsy, it would be difficult for him to secure any employment. Therefore, the loss of earning capacity ought to have been taken as 100% by the Commissioner. Therefore, the order dt.15.12.2001 in W.C.No.22 of 2000 of the Commissioner for Workmen's Compensation and Asst. Commissioner for Labour - I, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

35. C.M.A.No.1210 of 2001 : The appellant/claimant, while working as a driver of a jeep belonging to the 1st respondent suffered an accident on 09.06.1998, resulting in fracture of his right leg. AW.II, the medical practitioner stated that he is having shortening of lower limb; fracture of right femur with nail inside the bone; the claimant complains of pain to his right hip; walks with a limp; and the disability is 30% to 35%. He also stated that one more operation is required for removal of the nail. He stated that he can do some work by sitting on some bench. The Commissioner held that although the claimant is unfit to work as a driver, the loss of earning capacity is only 30%. In view of the fact that the injuries suffered by the claimant have rendered him unfit to work as a driver, which job he was doing at the time of the accident and there is a shortening of the right lower limb, the Commissioner should have assessed the loss of earning capacity as 100% and awarded compensation on the said basis. Therefore, the order dt.08.03.2001 in W.C.No.38 of 1999 of the Commissioner for Workmen's Compensation and Asst. Commissioner for Labour - II, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

36. C.M.A.No.550 of 2002 : The appellant/claimant was working as a driver of a lorry belonging to the 1st respondent and he suffered injuries in an accident which took place on 24.10.2000 in the course of his employment resulting in injuries to his legs. AW.II, the medical practitioner who deposed before the Commissioner stated that he performed surgery on the claimant resulting in open reduction and IM nailing of left femur, guillotine operation on right leg and revision amputation of right leg below the knee. He stated that the disability is 65% and he cannot work as lorry driver and requires assistance apart from artificial limbs. The Commissioner assessed the loss of earning capacity as 85%. In view of the fact that there is amputation of right leg below the knee apart from open reduction and IM nailing of left femur and the claimant cannot work any more as lorry driver, the Commissioner ought to have assessed the loss of earning capacity as 100%. Therefore, the order dt.17.10.2001/27.12.2001 in W.C.No.35 of 2001 of the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour - I, Guntur, is set aside. Compensation shall be assessed and paid to the appellant on the basis that his loss of earning capacity is 100%. The appeal is accordingly allowed. No costs.

37. In the result, CMAs.2197/2003, 856/2001, 3406/2002, 1685/2002, 335/2002, 1210/2001 and 550/2002 are

allowed without costs; and CMA Nos. 2380/2002 and 2274/2001 are dismissed without costs.
_____ JUSTICE M.S.RAMACHANDRA RAO Date:

24. 04-2013

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