

**(2002) 02 AP CK 0196**  
**In the Andhra Pradesh High Court**  
**Case No : A.A.O. No. 1523 of 1992**

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Mohd. Aleem and Another

RESPONDENT

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**Date of Decision :** 01-02-2002

**Acts Referred:**

**Citation :** (2002) 3 ALT 433

**Hon'ble Judges :** G. Bikshapathy, J

**Bench :** Single Bench

**Advocate :** Kota Subba Rao, for the Appellant; K. Janakirami Reddy, for the Respondent

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## Judgement

G. Bikshapathy, J.—The C.M.A. is filed against the Orders passed by the learned Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad in W.C.No. B/551/92(NF), dated 31-7-1992.

2. The claimant, who is an employee, working as driver of lorry bearing No. AP 9 T 1224 was involved in an accident on 26-2-1992. Thereupon, he filed a claim petition before the Commissioner for Workmen's Compensation claiming compensation under the provisions of the Act. The learned Commissioner found that the loss of earning capacity is cent per cent, accordingly awarded a compensation of Rs. 1,07,640/-. Aggrieved by the said Order, the present appeal has been filed by the Insurance Company.

3. The learned Standing Counsel for the Insurance Company submits that certificate produced by the workman only indicates that he had 15 per cent loss of disability and without there being any medical evidence or any other evidence, the Commissioner ought not to have fixed the loss of earning capacity of 100 per cent on the ground that he was made to be unfit to be a driver. He also submits that in case of grievous injuries, it is necessary that the Doctor should be examined and more so, whether the compensation is computed on the basis of the higher per cent of the disability than that certified by the Medical Officer in

the medical certificate. He relies on the decision of this Court reported in New India Assurance Co. Ltd. Vs. Sammayya M. Shankar (Workman) and Another, . Therefore, he submits that the Order is liable to be set aside.

4. I have heard the learned counsel for the petitioner and also the learned Standing Counsel for the Insurance Company.

5. In the instant case, the medical certificate produced by the Workman was only indicating 15 per cent disability whereas the learned Commissioner has fixed the disability at 100 per cent and computed the compensation on the 100 per cent loss of capacity. But, there is no supporting evidence on this aspect. Neither any doctor was examined in this regard nor is there any evidence that the petitioner was permanently incapacitated to work as driver of the lorry. It is the contention of the learned Standing Counsel for the Insurance Company that it is in the evidence that the licence of the petitioner was renewed after the accident. In such an event, the disability cannot be construed as 100 per cent under any circumstances. I am satisfied that the learned Commissioner has not considered the matter in a proper perspective. Without there being any reliable and cogent reasons with regard to the medical disability, it would not be appropriate to fix 100 per cent loss, on mere assertion of the workman that he is not able to work or which he took prior to the accident. There is also no evidence that he is not in a position to do any work at all, consequent on the injuries sustained by him.

6. Under these circumstances, I find that the Order of the learned Commissioner suffers from serious irregularity in arriving the loss of earning capacity, the finding is unsupported by any evidence.

7. Accordingly, the Order of the learned Commissioner is set aside and the matter is remanded back to the Commissioner for fresh consideration after giving notice to the parties concerned. It is also open to the parties to adduce any further evidence if they choose. The learned Commissioner shall dispose of the case within a period of four months from the date of receipt of a copy of this order. No costs.