

HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.11.2009

+ **FAO 289/2004**

NATIONAL INSURANCE COMPANY Petitioner

Through: Mr. Kamaldeep, Advocate

versus

PAPPU & ANR Respondent

Through: Ms. Pratima Chaudhary, Advocate for
Respondent No.1

CORAM:-

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest?

VEENA BIRBAL, J

1. By way of present appeal under Section 30 of Workmen's Compensation Act 1923 (hereinafter referred to as 'the Act'), appellant has challenged order dated 15.07.2004 passed by the Commissioner under the Workmen's Compensation Act, Ashok Vihar, Delhi (hereinafter referred to as the "Commissioner") in granting compensation to Respondent No.1-claimant in respect of application filed by him seeking compensation for the injury caused to him in an accident arising out of and in course of employment.

2. The case of respondent No.1, i.e., claimant before the

commissioner under the Act is that he was employed as a cleaner by respondent No.2 on his vehicle bearing No. HR-36-6083. On 26.12.2002, respondent No.1 was on duty on the said vehicle and had gone on a commercial trip. When the said vehicle reached near Lakhoti village under P.S. Mainpuri, it met with an accident as a result of which respondent No.1/claimant received serious injuries and became unconscious at the spot. His left leg was crushed and was taken to Civil Hospital at Etah, where his leg was operated and a steel rod was fitted. Thereafter, he was taken to Lady Harding Medical College and Smt. Sucheta Kriplani Hospital where minor surgery was done on the Left leg on 31.12.2002. Despite that, there was no recovery on 30.1.2003. Ultimately his left leg was amputated as a result of which the petitioner became disabled to the extent of 100% and his earning capacity was reduced to zero. A case was registered with the P.S. Mainpuri. Respondent No.1/claimant at the time of accident was drawing a salary of Rs. 2,833/- per month. Besides this, Rs.50/- per day was given to him as daily allowance and he was 18 years of age at the time of accident. Respondent No.2 on coming to know of accident had immediately informed appellant, i.e., Insurance Company. Even otherwise, notice under Section 10 of the Act was also served upon respondent No.1. As per him, the accident had occurred during the course of employment. By way of his claim petition, respondent No.1 had claimed compensation to the extent of

100% disability as per the Act.

3. Respondent No.2, i.e., employer filed the written statement wherein he admitted that the respondent No.1 was employed by him as a cleaner on aforesaid vehicle. He also admitted the factum of accident and that in the said accident, respondent No.1 sustained injuries. He also admitted the wages as are stated by the appellant No.1. It is further stated in the written statement that the vehicle in question was insured with the appellant and they were informed well in time and appellant are liable to indemnify the insured.

4. Written statement was also filed by the appellant, i.e., Insurance Company before the Commissioner under the Act wherein the factum of vehicle in question being owned by respondent No.2/employer and it being insured with appellant is not denied. As per appellant, claim is exaggerated and disproportionate.

5. Parties led evidence before the Commissioner. After hearing arguments, the Commissioner held that it was a case of leg amputation and the respondent/claimant was disabled by 100%. Accordingly, the commissioner held that earning capacity of respondent No.1/appellant has been reduced to zero, as such, awarded compensation of RS.5,43,312/-.

6. Aggrieved with the same, present appeal is filed.

7. Learned counsel for appellant has contended that in the present case, leg of claimant i.e., respondent No.1 was amputated below knee

and the same comes under the “List of injuries” deemed to result in “permanent partial disablement” described in part II of Schedule 1 of the Act and percentage of loss of earning capacity stated therein for the said injury is 50% whereas Commissioner has taken percentage of loss of earning capacity as 100% which is totally contrary to law. It is further contended that there is no opinion of the doctor that there was 100% loss of earning capacity as such impugned order is liable to be set-aside.

8. On the other hand, counsel for respondent no.1 has contended that the impugned order is legal and valid in all respects. It is contended that leg of respondent no.1 is amputated. Appellant is unfit to do work. The counsel referred to the case of **K. Janardhan v. United India Insurance Company Ltd.**, 2008 ACJ 2039, wherein as per Schedule I under the Act, there was a loss of 50% earning capacity to the claimant but the Hon’ble Supreme Court had affirmed the view taken in the matter by the court below by taking it a case of 100% disability. The above judgment also refers to the judgment of **Pratap Narain Singh Deo v. Shrinivas Sabata and Anr.**, 1976 ACJ 141, wherein also compensation has been awarded on the basis of loss of 100% earning capacity.

9. I have heard the learned counsel for parties at length and perused the record.

10. In order to appreciate the controversy, the relevant provisions under the Act are as under:

- “a. Section 2 (1) (g) of the Act defines ‘**Partial disablement**’ which means that where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman 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.
- b. Whereas ‘**Total disablement**’ is defined under Section 2 (1) (l) of the Act, which means such disablement, whether of a temporary or permanent nature, as incapacitates a workman 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 loss of earning capacity, as specified in the said part II against those injuries, amounts to one hundred percent or more.”

11. Whereas Section 4 of the Act deals with the amount of compensation, relevant for the case in hand is Clause (c) which is extracted as:

“4. AMOUNT OF COMPENSATION. –

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

- (a) xxxxxx xxxxx xxxxxx
- (b) xxxxxx xxxxx xxxxxx

(c) Where permanent partial disablement results from the injury

- (i) in the case of an injury specified in Part II of Schedule 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 that injury, and
- (ii) in the case of an injury not specified in Schedule 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;

XXXXX XXXXX XXXXX XXXXX

12. Part I of the Schedule I enumerates the list of injuries deemed to result in “permanent total disablement” and the percentage of loss of earning capacity with respect to the injury described in the list. Part II of the Schedule I of the Act enumerates the list of injuries deemed to result in “permanent partial disablement”. Serial 20 of part II describes the injury of amputation below knee with stump exceeding 8.89 cms but not exceeding 12.70 cms serial and Serial 21 of the same part describes the amputation below knee with stump exceeding 12.70 cms. In both the cases the percentage of loss of earning capacity is specified as 50 percent.

13. The Supreme Court, in the case of **Pratap Narain Singh Deo v. Shri Nivas Sabata and Anr.**, (*supra*), while construing the expression ‘total disablement’ as defined in section 2 (1) (e) of the Act held that if injury makes the workman unfit for the work which he was discharging prior to the accident, the disablement is total and not partial. In that case a carpenter while doing work in course of employment fell down and sustained injuries as a result of which his left arm above elbow was amputated and he became unfit for the work of carpenter and as per Schedule I of the Act, it was a case of “Permanent Partial Disablement”. In the above case, the Supreme Court held that the disablement was total and not partial as the work of carpentry cannot be done by one hand only.

14. In **K. Janardhan vs. United India Insurance Co. Ltd.**, AIR 2008 SC 2384, where appellant was a tanker driver, while driving vehicle he met with an accident as a result of which he sustained injuries and also amputation of right leg upto the knee joint. The Commissioner found that as the claimant had suffered amputation of his right leg upto knee, he was said to have suffered a loss of 100% of his earning capacity as a driver and on that basis awarded compensation to him. An appeal was thereafter taken to High Court of Karnataka by the Insurance Company. The High Court accepted the plea raised in the appeal that as per Schedule to the Workmen’s

Compensation Act, the loss of a leg on amputation amounted to 60% reduction in the earning capacity and the doctor had opined it to 65% disability, and as such above figure was to be accepted and accordingly reduced the compensation. In these circumstances, the claimant moved to the Supreme Court. The Supreme Court relying on its decision in **Pratap Narain Singh Deo v. Shri Nivas Sabata and Anr** (*supra*) held that appellant suffered 100% disability and incapacity, in earning as a driver as his right leg had been amputated from the knee and set aside the judgment of High Court and restored that of the Commissioner.

15. A Division Bench of Gujarat High Court in **Punambhai Khodabhai Parmar v. G. Kenal Construction and Anr.** (1985-I-LLJ-98) wherein the workman was employed as driver who sustained permanent disability of his right hand finger, right elbow and right thigh, on evidence, observed that the injured workman has been rendered unfit for the job, relying on the decision of the Supreme Court in **Pratap Narayan Singh Deo v. Shrinivas Sabata and Anr.** (*supra*) held that permanent total disablement is to be judged from the point of view of the job which the workman was doing and if the disablement renders him unfit to do that job, the disablement is total and not partial.

16. A Division Bench of Karnataka High Court in **Siddappa v. The General Manager, K.S.R.T.C. and Anr**, (1988) I ACC 539, explained the scope of extent of percentage of loss of earning capacities specified in part II of the Schedule and has pointed out that the extent of permanent disablement specified therein should be deemed to have been taken place in the instances specified in column 2 of the schedule. But there is no bar upon the claimant from proving his case that he had suffered higher percentage of loss of earning capacity.

The ratio of the aforesaid judgment was applied in **National Insurance Company Ltd. V. R. Vishnu and Anr**, 1992 ACJ 590, wherein injured workman was employed as a driver of a tourist bus which met with an accident and his both legs were injured and finally his left leg was amputated below knee. The Commissioner concluded that the claimant had suffered total permanent disablement. In appeal, the Division Bench of Karnataka High Court observed that the extent of permanent disability suffered as specified in the schedule to the Act is no bar for pleading and proving that actually the concerned workman has suffered higher percentage of or total, disability.

17. A learned Judge of Orissa High Court in case of **National Insurance Company v. Narendra Samal and Anr**, 1993 ACJ 1095, wherein the injured workman was a helper and was going in the truck

from Ramgarh to Baripada, the truck dashed against a tree at road-side and over turned whereby left leg of the workman was crushed resulting in compound fracture, which was amputated, observed that it was a case of total disablement and not partial as the injured workman was not able to perform his duties as a helper in the truck.

18. In the present case, it is not disputed that because of amputation of leg, respondent no. 1 has been incapacitated to do the duties of cleaner. Cleaner has to do various kinds of jobs like cleaning the vehicle, loading – unloading the goods from vehicle, changing punctured tyre, etc. Such type of work can't be handled by a person whose leg has been amputated and who is not able to walk without the support. Medical documents including that of amputation below knee are on record Exhibit AW 1/1 to 1/20. There is an evidence of respondent no. 1/claimant in the form of an affidavit in the trial court record wherein it is stated that due to injuries he has become disabled to the extent of 100% and his earning capacity has been reduced to zero. Even in pleadings he has set up his case to that effect. Nothing contrary is placed on record by the appellant to rebut the same. It is a clear case of “permanent disablement”. The Commissioner has rightly held that respondent no. 1/claimant is disabled by 100%. His

earning is reduced to 100% and awarded the compensation accordingly. As the respondent no. 1/claimant has become permanently disabled and it being a case of total disablement, respondent no. 1/claimant is not debarred from claiming compensation more than that specified in the schedule for the loss of earning capacity, as has been held by Supreme Court in **Pratap Narain Singh Deo v. Shri Nivas Sabata & Anr. (supra)**, **K. Janardhan v. United India Insurance Company Ltd. (supra)** and other cases discussed above. There is no illegality in the impugned order which calls for interference by this Court. Order of Ld. Commissioner is upheld. Appeal stands dismissed with no order as to costs.

VEENA BIRBAL, J.

November 6th, 2009