

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 242/2011 c/w
MA No. 453/2011
MA No. 609/2014
MA No. 74/2015
MA No. 75/2015

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MA No. 242/2011

Divisional Manager,
J&K State Forest Corporation,
Division, Doda

.....Applicant(s)/Appellant(s)

Through :- Mr. Vipin Gandotra, Advocate

v/s

Sh. Sher Singh
S/o Sh. Brij Lal
R/o Trown, Tehsil & Distt. Doda

.....Respondent(s)

Through :- Mr. Idrees Saleem Dar, Advocate

MA No. 453/2011

Divisional Manager,
J&K State Forest Corporation,
Division Bhandarwah

.....Applicant(s)/Appellant(s)

Through :- Mr. Vipin Gandotra, Advocate

v/s

Abdul Aziz Malik
S/o Khalla Malik
R/o Malna,
Tehsil and Distt. Doda

.....Respondent(s)

Through :- Mr. Idrees Saleem Dar, Advocate

MA No. 609/2014

J&K State Forest Corporation,
Through its Divisional Manager
Ext. Division Ramban

.....Applicant(s)/Appellant(s)

Through :- Mr. Vipin Gandotra, Advocate

v/s

1. Jia Lal S/o Sh. Farangi
R/o Bhattan
Teh. And Distt. Ramban.

2. Ab. Quyoom
(Contractor)
R/o Malothi Bhaderwah

3. Jan Mohd.
S/o Roshan Din
R/o Bhattan The. And Distt. Ramban

.....Respondent(s)

Through :- Mr. Idrees Saleem Dar, Advocate

MA No. 74/2015

Divisional Manager,
J&K State Forest Corporation,
Division, Doda

.....Applicant(s)/Appellant(s)

Through :- Mr. Vipin Gandotra, Advocate

v/s

Fareed Ahmad
S/o Sher Mohd. Malik
R/o Nan-Batogra Tehsil Tathri
Distt. Doda

.....Respondent(s)

Through :- Mr. Idrees Saleem Dar, Advocate

MA No. 75/2015

Divisional Manager,
J&K State Forest Corporation,
Division, Bhaderwah

.....Applicant(s)/Appellant(s)

Through :- Mr. Vipin Gandotra, Advocate

v/s

Farooq Ahmad S/o Gh. Qadir Sheikh
R/o Bandoga Tehsil Tathri
Distt. Doda

.....Respondent(s)

Through :- Mr. Idrees Saleem Dar, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

1. The aforesaid appeals arise out a claim petitions filed under Workmen's Compensation Act, 1923 ["the Act"] and briefly stated, the factual background of each case is enumerated as under: -

i. MA No. 242/2011

a. A claim petition was filed by one Sher Singh, who suffered 20% permanent disability after slipping from the *Pathru*, resulting in the dislocation/fracture of his left shoulder joint. At the time of the accident, he was 29 years of age, and the authority under the Act awarded him compensation of Rs. 75,500/-, along with interest @ 12% per annum.

ii. MA No. 453/2011

a. A claim petition was filed by one Abdul Aziz Malik, who suffered 30% permanent disability after sustaining injuries due to the collapse of a shed. The shed collapsed as a result of a falling stone, causing a fracture to his backbone. At the time of the accident, he was 45 years of age, and the authority under the Act awarded him compensation of Rs. 1,22,000/-, out of which 50% has already been released in his favour.

iii. MA No. 609/2014

a. In this case, the claim petition was filed by one Jia Lal, who suffered 60% permanent disability after falling while carrying a wooden log. During the accident, the wooden log fell on his right arm, resulting in a fracture thereof. At the time of the accident, he was 25 years of age and was awarded compensation of Rs. 4,68,525/-, along with interest @ 12% per annum.

iv. MA No. 74/2015

a. A claim petition was filed by one Fareed Ahmed, who was employed as a *Cheran* (sawing) labourer in Compartment No. 71, Dessa. During the course of his employment, he suffered 50% permanent disability when his leg came underneath a log of

wood, resulting in a fracture of his right ankle joint. At the time of the accident, he was 31 years of age and was earning Rs. 6,000/- per month. He was awarded compensation of Rs. 2,47,140/-, along with interest @ 12% per annum.

v. MA No. 75/2015

- a. A claim petition was filed by one Farooq Ahmed, who was employed as a *Cheran* (sawing) labourer in Compartment No. 9, Section 1. During the course of his employment, he suffered 35%–40% permanent disability after sustaining injuries to his leg and foot while working on a tree. At the time of the accident, he was 21 years of age and was earning Rs. 6,000/- per month. He was awarded compensation of Rs. 2,80,614/-, along with interest @ 12% per annum, and 25% of the awarded amount has already been released in his favour.

2. All these appeals have been preferred by the J&K State Forest Corporation, contending that the awards suffer from illegality as the Commissioner under the Act failed to correctly apply the law and ignored the provisions of Section 4 of the Workmen's Compensation Act, 1923, which provide that compensation is payable only on account of injuries sustained by a workman in the course of employment. It is contended that the compensation assessed is unrealistic and legally inadmissible, as the nature of the injuries forming the basis for assessment and the mode of determining compensation, which require different yardsticks, have not been

properly appreciated. Consequently, it is argued that the awards suffer from perversity.

3. Placing reliance upon the judgment of a Coordinate Bench of this Court in "Divisional Manager, J&K SFC v. Bansi Lal," learned counsel for the appellant submitted that, by virtue of the amendment made to the statute with effect from 01.07.1984, the expression "as assessed by the qualified medical practitioner" has not been correctly appreciated by the authority under the Act. It is argued that the provision clearly contemplates that a medical certificate, by itself, cannot be made the basis for assessing the loss of earning capacity unless such loss is specifically reflected therein. In the absence of any certification by a qualified medical practitioner regarding the percentage of loss of earning capacity, the authority was not competent to determine the same on the basis of its own assessment.
4. Per contra, learned counsel for the respondents, while supporting the awards passed by the authority under the Act, vehemently contended that no substantial question of law arises for consideration. It was submitted that the medical expert had clearly deposed before the authority under the Act regarding the nature of the injuries suffered by the claimants and the consequent loss of earning capacity, and that the compensation had been correctly computed in terms of Section 4, read with Schedule IV of the Act. Placing further reliance upon Section 12 of the Act, it was argued that the appellants are liable to pay compensation, as the claimants were engaged by them either directly or through contractors, and the injuries were sustained during the

course of their employment. Therefore, the provisions of the Act would apply as if the claimants had been directly employed by the principal employer, the only stipulation being that the amount of compensation is to be calculated with reference to the wages drawn by the claimants.

5. The principal object of Section 12 of the Act is to secure compensation to workmen who are engaged through a contractor by the principal employer for the execution of work forming part of the latter's ordinary trade or business. The scheme of Section 12 is intended to safeguard the workman's right to claim compensation not only against the immediate employer, whether a contractor or a sub-contractor, but also against the principal employer.
6. Heard both the counsels at length and examined record.
7. Section 30 of the Act, under which the present appeals have been preferred, provides that an appeal shall lie to the High Court against an order of the Commissioner only when the appeal involves a substantial question of law. The third proviso to Section 30 further stipulates that no appeal shall lie unless the memorandum of appeal is accompanied by a certificate issued by the Commissioner to the effect that the amount awarded has been deposited with him, which is equivalent to the amount sought to be appealed against. Thus, having regard to the scheme of Section 30, an appeal is maintainable only where a substantial question of law is involved. By necessary implication, where a party is able to demonstrate that a finding returned by the authority under the Act is perverse, in the sense that it

is either unsupported by or wholly contrary to the material available on record, this Court would be justified in exercising its appellate jurisdiction under the said provision. Otherwise, interference with the findings returned by the Commissioner is minimal.

8. It was argued that there was no employer-employee relationship between the parties and that the Commissioner has failed to notice this aspect. In case titled Managing Director, State Forest Corporation, Shimla, H.P. vs. Mohd. Sikandar it was held as under:

“The question whether there exists any relation of employer-employee between the parties is not a substantial question of law rather a question of fact determined by the Commissioner after considering the evidence of the evidence of the respondent i.e. respondent himself, Abdul Jabbar and Abdul Rashid. Reliance is placed upon the decision of Hon’ble Apex Court in North East Karnataka Road Transport Corp. Vs. Sujatha, (2019) 11 SCC 514 where Apex Court has held as under:

At the outset, we may take note of the fact being a settled principle, that the question as to whether the employee met with an accident whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in the accident, whether there was any insurance coverage obtained by the employer to cover the incident, etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.

The aforementioned questions are essentially the questions of fact and, therefore, they are required to be proved with the aid of evidence. Once they

are proved either way, the findings recorded thereon are regarded as the findings of fact.

This authority answers the first question raised by the appellant and being purely question of fact would not by itself constitute a substantial question of law.

9. In *Divisional Manager, J&K SFC v. Bansi Lal* (MA No. 781/2010), a Coordinate Bench of this Court, while considering an appeal of similar nature, was confronted with a case where the claimant had suffered 70% permanent disability, but there was no certificate issued by a qualified medical practitioner regarding the corresponding loss of earning capacity. The medical expert had neither explained the nature of the injuries suffered by the claimant nor stated anything regarding the impact of the disability on his earning capacity. Despite the absence of such medical evidence, the Commissioner, without insisting upon a certificate from a qualified medical practitioner or subjecting the claimant to a medical examination for determining the impact of the injuries on his earning capacity, proceeded on his own to determine the loss of earning capacity. The Coordinate Bench, after examining the legal position and taking note of the amendment introduced to Section 4 by Act 22 of 1984, which came into force with effect from 01.07.1984, observed that the words "as assessed by a qualified medical practitioner" were not part of the original provision but had been introduced by the aforesaid amendment. While considering the question of law as to whether the Commissioner could, on his own, determine the loss of earning capacity without

obtaining an assessment from a qualified medical practitioner, the Court held as under:

“I am in full agreement with the view taken by the Single Bench of this Court in the aforesaid case which is also fortified by the view of Full Bench of Kerala High Court in Sreedharan’s case (supra) and accordingly hold that the Commissioner was not competent to assess the loss of earning capacity of his own without there being any certificate by a qualified medical practitioner certifying the loss of earning capacity proportionate to the percentage of disability suffered by a workman in the case of non scheduled injury. This answers the question formulated above.

The reliance put by the learned counsel for the respondent on the judgment of Hon’ble Supreme Court rendered in the case of Golla Rajanna vs. The Divisional Manager, AIR 2016 SC 5382 is misplaced. The aforesaid judgment has been rendered in peculiar facts and circumstances and, therefore, distinguishable. The impact of amendment made in 4(1)(c)(ii) of the Act of 1923 by Act 22 of 1984 and incorporation of bracketed portion “as assessed by a qualified medical practitioner” were not subject matter of discussion and adjudication in the aforementioned case.

In view of the foregoing discussion and the answer given to the formulated question, this Court is left with no option, but to set aside the award and remit the matter to the Commissioner with a direction to take appropriate steps for determining the loss of earning capacity of the appellant-workman in accordance with the mandate contained in Section 4(1)(c)(ii). Ordered accordingly. The Commissioner shall get the respondent medically examined by a qualified medical practitioner or the Board of Doctors for assessment of disability and the loss of earning capacity. Based upon such certificate, the Commissioner would proceed to re-determine the

amount of compensation payable to the respondent-workman.”

10. In all the aforesaid petitions, the claimants suffered disabilities which, according to them, were of a permanent nature. The alleged permanent disabilities were sought to be proved through the testimony of medical experts who appeared before the authority below.
11. It was argued that, in terms of Section 4(1) (c) of the Act, it was incumbent upon the medical experts to adduce evidence demonstrating the extent to which the permanent disablement affected the earning capacity of each claimant. According to the appellant, the failure to produce such evidence resulted in the authority below placing reliance solely on the oral testimony of the medical experts without determining the actual diminution in the earning capacity of the claimants.
12. In AIR 2011 SC 1785, the Supreme Court, while considering the principles governing the assessment of compensation under beneficial legislation, held that the authority or Tribunal must ascertain the effect of permanent disability on the earning capacity of the injured person. In doing so, the Court relied upon the principles laid down in Raj Kumar v. Ajay Kumar & Another, (2011) 1 SCC 343, and observed that the assessment must determine the extent to which the permanent disability has affected the claimant's earning capacity. Such an assessment cannot be made mechanically; rather, it must be undertaken having due regard to the various parameters laid down in

the said judgment. The Apex Court enunciated the following propositions:

“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.

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 percent, 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”.

13. Thus, depending upon the nature and extent of the disability suffered by the claimant, its impact on the claimant's earning capacity and livelihood is required to be examined. The authority must determine whether the disability affects the claimant's day-to-day functioning, vocation, and the nature of work that he was previously engaged in, and whether he would be capable of continuing the same or any similar employment. If the disability restricts his movements or functional abilities to such an extent that it adversely affects his capacity to earn, the same must be duly assessed. In Bansi Lal's case (supra), this Court examined the powers of the Commissioner in this regard and held that the Commissioner is not empowered to assess the loss of earning capacity on his own in the absence of a certificate issued by a qualified medical practitioner certifying the percentage of loss of earning capacity corresponding to the disability suffered by the workman.

14. In the present batch of appeals, Sher Singh in MA No. 242/2021 is stated to have suffered 20% permanent disability; Abdul Aziz Malik in MA No. 453/2011, 30% permanent disability; Mr. Jia Lal in MA No. 609/2014, 60% permanent disability; Mr. Fareed Ahmed in MA No. 74/2015, 50% permanent disability; and Mr. Farooq Ahmed in MA No. 75/2015, 35–40% permanent disability. This Court has carefully examined the record of the Commissioner and finds that there is not even an iota of material to establish that any of the claimants possessed a disability certificate issued by a competent Medical Board.
15. Learned counsel for the respondents submitted that the claims arise out of incidents that occurred in the year 1999, and at the relevant time, compensation claims were commonly determined on the basis of medical certificates issued by qualified medical practitioners rather than certificates issued by a Medical Board. Even if that submission is accepted, in view of the law laid down by the Hon'ble Supreme Court, compensation cannot be assessed mechanically. The medical expert is required to adduce evidence indicating the extent to which the permanent disability has resulted in loss of earning capacity of the claimant. In the present case, the evidence has not been appreciated from the aforesaid perspective. The authority under the Act proceeded solely on the face value of the testimony of the medical experts without examining the claimants' cases in the light of the principles governing assessment of loss of earning capacity and functional disability.

16. Apart from assessing the loss of earning capacity, the issue of functional disability was also required to be considered by the Commissioner. However, it appears that no such exercise was undertaken. Learned counsel for the respondents argued that all the claimants were labourers engaged in *Chiran* (wood-cutting) work by the appellants, so, having regard to the beneficial nature of the legislation and the considerable lapse of time since the time of the incidents, it would not be appropriate to remand the matters and that this Court should determine the claim petitions on the basis of the material already available on record.
17. Though the submission carries some persuasive force, this Court is unable to accept the same. In the absence of any evidence from the medical experts laying the necessary foundation for assessing the loss of earning capacity and the extent of functional disability suffered by the claimants, the mere existence of a specified percentage of permanent disability cannot, by itself, form the basis for determining the quantum of compensation. Consequently, the matters deserve to be remanded to the Commissioner, who shall have the claimants medically examined by a qualified medical practitioner or a duly constituted Medical Board for assessment of the nature and extent of disability as well as the corresponding loss of earning capacity. Upon receipt of such medical opinion, the Commissioner shall be at liberty to re-determine the compensation payable to each claimant in accordance with law.

18. Accordingly, the view laid down by this Court in Bansi Lal's case (supra) is reaffirmed and these appeals deserve to be allowed. The awards passed by the Commissioner in all these appeals are, therefore, set aside, and the matters are remitted to the Commissioner with a direction to undertake a fresh determination of the claim petitions after assessing the loss of earning capacity of the claimant-workmen in accordance with law and the principles enumerated hereinabove. In order to ensure that the claimants are not subjected to any further hardship on account of the prolonged pendency of the proceedings, it is directed that 50% of the compensation amount awarded and deposited before the Commissioner shall stand released in favour of the respective claimants, subject to due verification and identification. The remaining 50% of the awarded amount, together with the interest accrued thereon, shall be kept in an interest-bearing fixed deposit and shall abide by the final outcome of the proceedings before the Commissioner. The amount already released to the claimants, shall be duly adjusted while re-determining the final compensation payable in accordance with law.

(Sanjay Parihar)
Judge

JAMMU
23.07.2026
Manik

Whether this order is speaking: Yes

Whether this order is reportable: Yes