

THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**FAO No. 1730 of 2012 (O&M)
Date of decision : 18.02.2015**

Reliance Gen Insurance Co. Ltd.

.....Appellant

Versus

Rakesh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant

Mr. Chanderhas Yadav, Advocate
for respondents No. 1

None for respondent No. 2

Mr. S.K. Yadav, Advocate
for respondent No. 3

ANITA CHAUDHRY, J.

This appeal at the instance of the Insurance Company disputing the compensation granted to the claimants for the disability. The short issue was whether the claimants were entitled to compensation for the functional disability or the disability assessed by the Medical Officer.

Rakesh, claimant suffered injuries in an accident which took place on 22.9.2009. The claimant was 21 years old. The right leg above the knee was amputated. The Medical Board had

assessed the disability at 100%. The claimant used to run a repair shop. The Tribunal noted that since he was doing manual work, therefore, his functional disability should be taken at 100%. The minimum wages were taken at ₹ 3,600/- and the annual loss was taken at ₹ 43,200/- and applying the multiplier of 18 the compensation was assessed at ₹ 7,77,600/-. The claimant was also awarded a sum of ₹ 96,215/- for the medical expenses and separate amount for transportation, special diet, pain and suffering. An award of ₹ 9,04,815/- was passed.

The submission on behalf of the Insurance Company is that the disability is in a non-fatal accident and the percentage of loss of earning capacity has to be taken as per Schedule I of the Workmen Compensation Act, 1923 and as per Schedule I when the amputation is 1/3rd of the thigh the functional disability would not be more than 60% as per schedule proved in Employees Compensation Act, 1923. It was urged that the claimant was not a labourer and was running a clutch repair shop and the functional disability would not be 100%.

The submission on the other hand was that the claimant used to repair clutches and with the loss of right leg above the knee *ipso facto* means a total disablement and the Tribunal had considered the observations made in ***R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd., 1995 ACJ 366 (SC)*** and ***Raj Kumar vs. Ajay Kumar and another, 2010(2) Scale 165*** and had rightly considered the disability to be 100% as the injury was of such a nature that the claimant had been disabled to do his daily routine

work after the accident.

The correctness of the impugned judgment is questioned mainly on the ground as to whether the claimant had been totally disabled? The question arising for consideration is whether the loss of leg above the knee would not mean total disablement as understood in terms of Section 2(1)(l) of the Act. The main submission was that as per Schedule of the Employees Compensation Act, 1923 the loss of a leg due to amputation above the knee did not mean 100% reduction in the earning capacity.

The injured claimant used to repair clutches. In my view he has been rendered unfit as the work which was being done by him can not be done now. In my view, the Tribunal had recorded a reasonable and correct finding. In ***Pratap Narain Singh Deo vs. Srinivas Sabata and another, 1976 AIR 222***, a carpenter had suffered amputation of his left arm from the elbow. This Court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under:

"5. The expression "total disablement" has been defined in Section 2(1)(l) of the Act as follows:

(1) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement. It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether

the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only. This is obviously a reasonable and correct finding."

The amputation above the knee has left the claimant totally disabled. The finding should not have been questioned by the Insurance Company. The Tribunal had taken the lowest wages to calculate the loss and I am not prepared to interfere.

The appeal is dismissed.

18.02.2015

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(ANITA CHAUDHRY)
JUDGE

