

FAO No. 5111 of 2009 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 5111 of 2009 (O&M)

Date of Decision: February 24, 2016

M/s Sunil Spinners

...Appellant

Versus

Bajrangi Parsad

...Respondent

(2)

FAO No. 4463 of 2010

Date of Decision: February 24, 2016

Bajrangi Parsad

...Appellant

Versus

M/s Sunil Spinners

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellant in FAO No.5111 of 2009 and
for the respondent in FAO No.4463 of 2010.

Mr. Rajesh Bansal, Advocate
for the respondent in FAO No.5111 of 2009 and
for the appellant in FAO No.4463 of 2010.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.4176-CII of 2016 in
FAO No. 5111 of 2009

Prayer in this application is for listing the appeal for early
hearing.

FAO No. 5111 of 2009 (O&M)

Notice of the application was issued to the counsel opposite, who states that he has no objection to the prayer made in the application.

Counsel for the appellant informs the Court that the appeal preferred by the respondent against the same award for enhancement of compensation is also pending consideration before this Court in FAO No.4463 of 2010, titled as 'Bajrangi Parsad Vs. M/s Sunil Spinners', which may also be taken up for hearing and disposed of together.

In the light of the above, the present application is allowed and both the appeals are taken on board for final disposal.

**FAO No.5111 of 2009 and
FAO No.4463 of 2010**

Challenge in these appeals is to the award passed by the Commissioner under the Workmen's Compensation Act, 1923, Circle-II, Panipat, dated 12.05.2009, whereby, an application under Section 22 of the Workmen's Compensation Act, 1923 (hereinafter referred to as '1923 Act'), has been allowed assessing the disability of the claimant at 50% loss of earning capacity and the wages as ₹4,000/- per month along with interest at the rate of 10% per annum after one month of filing application i.e. from 20.02.2005. 25% penalty of amount of compensation and interest thereon has also been granted. The total amount has been assessed at ₹4,02,815/-

as compensation. Future interest at the rate of 12% per annum has also been granted, in case the compensation amount is not deposited within one month of the passing of the award.

2. Briefly the facts are that the claimant-Bajrangi Parsad was employed as card machine man with the respondent since 01.10.2004. On 25.12.2004, when he was on night duty, at about 7.30 a.m., his right hand came in the machine due to which, his right thumb was amputated. It was asserted that this accident had occurred because of a technical defect in the card machine. Co-employees Vijay Kumar and Udit Sharma took the claimant to Tikku Hospital, Model Town, Panipat, where he was given treatment. An MLR dated 28.12.2004 was got recorded from Civil Hospital, Panipat. The expenses incurred on the treatment was ₹30,000/- and the wages as claimed was ₹4,500/- per month. As the employer refused to grant him compensation on his demand, the present claim application was filed.

3. The employer, on the other hand, denied the relationship of employee and employer and also that the accident had taken place in the factory on 25.12.2004, while he was on night duty. The employment qua Vijay Kumar and Udit Sharma with the employer was also denied. However, despite various opportunities granted to the employer, no evidence was led by him.

4. On the other hand, the claimant appeared himself and

also produced Vijay Kumar and Udit Sharma, who had taken him to the hospital as also Dr. Ved Prakash Gupta, Senior Medical Officer, Orthopedic, Civil Hospital, Panipat, who had proved the disability certificate issued by the Medical Board to the claimant assessing the disability to be at 15%.

5. It is the contention of the learned counsel for the employer that the assessment of the loss of earning capacity at 50% is on the higher side especially in the light of the fact that the disability certificate only depicts the disability as 15%. In any case, he contends that as per Schedule I Part II Entry 10, the disability could have been at the most assessed at 20%. He contends that no reasoning has been assigned as to why 50% loss of earning capacity has been assessed merely by relying upon the judgment of the Supreme Court in the case of **K. Janardhan Vs. United India Insurance Company Ltd. & Anr, AIR 2008 Supreme Court 2384** without there being any evidence on record. He, thus, contends that the award as passed by the Commissioner cannot be sustained and deserved to be modified.

6. Counsel for the claimant, on the other hand, asserts that the award passed by the Commissioner is in accordance with law and, therefore, does not call for any interference as far as the reduction in the assessment of loss of earning capacity is concerned, rather, it should have been 100% in the light of judgment of Supreme

Court referred above especially when it has come in evidence of the doctor that claimant would not be able to operate the card machine. He thus, contends that the appeal as preferred by the claimant deserves to be allowed by enhancing the compensation. Assertion has also been made that interest and penalty should be granted from the date of accident as per the law laid down by Supreme Court and not from the date of filing of the claim petition or a month thereafter, as has been granted by the Commissioner.

7. I have considered the submissions made by the learned counsel for the parties and with their able assistance, have gone through the impugned award.

8. It is not in dispute that as per the evidence brought on record, the employer and employee relationship stands established, in fact, counsel for the employer has not disputed the said finding. The disability certificate, which has been brought on record and duly proved assessing the disability to be 15%, the loss of earning capacity as assessed by the Commissioner at 50% is merely with reference to judgment of the Supreme Court in *K. Janardhan's* case (supra).

9. Section 2(g) of the 1923 Act defines partial disablement as follows:-

“(g) "partial disablement" means, 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.”

10. A perusal of the above would show that the disability in the nature, which can be termed as permanent, has to be assessed as it reduces the earning capacity. The requirement is that at the time when the accident had taken place, the disability should be reducing his earning capacity to take up any other employment which he was capable of undertaking at that time, i.e. immediately before the accident, the proviso thereto is, however, that an injury specified in Part II of Schedule I shall be deemed to be result of permanent partial disablement. When this is taken into consideration, the claimant has lost his thumb and therefore, it cannot be said that he has totally lost his earning capacity, may be he is unable to run a particular machine i.e. the card machine. Nothing has come on record which would indicate that he had been trained for this purpose only and was, therefore, denied the benefit of his training or this technical training was of such a nature as would leave him incapable

of performing any other work.

11. The judgment on which reliance has been place by the counsel for the claimant was a case of total disablement where the driver has lost his right leg upto knee joint and on that basis, the loss of earning capacity was assessed at 100% by the Supreme Court. Present is a case where the assessment has to be made as per Schedule I Part II Entry 10, which comes to 20% and this conclusion of mine finds support in the judgment of the Supreme Court in **Oriental Insurance Co. Ltd. Vs. Mohd. Nasir & another, 2009 (3) R.C.R. (Civil) 849**, where this principle has been incorporated and made applicable. Reference can be made to paras 23 to 30 of the said judgment where it has been held as follows:-

“23. Both, the 1923 Act and 1988 Act are beneficent legislation insofar as they provide for payment of compensation to the workmen employed by the employers and/or by use of motor vehicle by the owner thereof and/or the insurer to the claimants suffering permanent disability. The amount of compensation is to be determined in terms of the provisions of the respective Acts. Whereas in terms of the 1923 Act, the Commissioner who is a quasi judicial authority, is bound to apply the principles and the factors laid down in the Act for the purpose of determining the compensation, Section 168 of the 1988 Act enjoins the Tribunal to make an award determining the

amount of compensation which appears to be just.

24. Both the Acts aim at providing for expeditious relief to the victims of accident. In these cases, the accidents took place by reason of use of motor vehicles.

Both the statutes are beneficial ones for the workmen as also the third parties. The benefits thereof are available only to the persons specified under the Act besides under the Contract of Insurance. The statutes, therefore, deserve liberal construction. The legislative intent contained therein is required to be interpreted with a view to give effect thereto.

25. With the aforementioned backdrop, we may analyse the contentions raised before us by the learned counsel for the parties.

26. Both the statutes provide for the mode and manner in which the percentage of loss of earning capacity is required to be calculated. They provide that the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disability suffered by the injured vis-à-vis the injuries specified in the First Schedule of the 1923 Act. Indisputably where injuries are specified in the First Schedule, the mode and manner provided for the purpose of calculating the amount of compensation would be applicable.

27. The statutes provide for determination of the extent of physical disability suffered by a qualified medical practitioner so as to enable him to

assess the loss of earning capacity. Explanation 1 appended to clause (c) of sub-section (1) of Section 4 provides that where there are more injuries than one, the aggregate amount of compensation has to be taken but the same should not exceed the amount which would have been payable in case of permanent total disablement. It is also beyond any doubt or dispute that while determining the amount of loss of earning capacity, the Tribunal or the High Court must record reasons for arriving at their conclusion.

28. The 1923 Act which would also be the claims applications arising out of use of motor vehicles in terms of the provisions of 1988 Act would for the purpose of determination of the amount of compensation where the victim of the accident suffers from disability in the cases coming within the purview thereof. The Note appended to the Second Schedule of the 1988 Act raises a legal fiction, stating that 'injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under the Workmen's Compensation Act, 1923'. Permanent disability, therefore, for certain purposes have been co-related with functional disability.

29. As to what, therefore, in our opinion, would be relevant is to find out the nature of injuries and as to whether the same falls within the purview of Part I or Part II thereof. We have noticed

hereinbefore that whereas Part I specifies the injuries which would deem to result in permanent total disablement, Part II specifies injuries which would be deemed to result in permanent partial disablement.

30. The distinction between the 'permanent total disablement' and 'permanent partial disablement' is that whereas in the former it is 100% disablement, in the latter it is only the disablement to the extent specified in the Schedule. Similar terms have been used in clauses (a) and (b) of paragraph 5 of the Second Schedule of the Motor Vehicles Act. It, by reference, incorporates the provisions of the First Schedule of the 1923 Act. Indisputably, therefore, the Note appended thereto would not only be applicable to the cases falling under the 1923 Act but apply to the cases which fall under the 1988 Act as well."

12. In view of the above, the loss of earning capacity of the claimant is assessed at 20% as per the Entry 10 Part II Schedule I of the 1923 Act. The impugned award of the Commissioner stands modified to that extent.

13. As regards the grant of the interest from the date of filing of the petition is concerned, suffice it to say that the judgment in *Oriental Insurance Co. Ltd.*'s case (supra) clearly holds that it has to be from the date of accident. Similar would be the position with regard to the interest and the penalty. The award of the

Commissioner stands modified accordingly on this aspect also.

14. In view of the above, these appeals are disposed of by directing the Commissioner, Workmen's Compensation Act, Circle-II, Panipat, to assess the compensation as stated above and disburse the same to the claimant. In case the amount which has been deposited by the employer is found to be in excess of the total amount which the claimant is entitled to, the remaining amount shall be refunded to the employer and in case, it is found short, the same be deposited by the employer within a period of one month from today.

February 24, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**