

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 866 of 2012

Amit Agrawal S/o Shri Ramgopal Agrawal, aged about 35 years, R/o Near Shiv Mandir, Vidya Nagar, Bilaspur, District Bilaspur (C.G.).

---Appellant

Versus

1. Smt.Mohini Bai W/o Shri Mangluram Suryawanshi, aged about 30 years. (Claimant)

2. Ravi Sharma S/o Shri Devi Prasad Sharma.

Both are R/o village Bhadaura, P.S.Masturi, Tahsil & District Bilaspur (C.G.).

---Respondents

For appellant : Shri Sunil Otwani along with Shri Ankit Singhal, Advocates.

For respondents No.1/ : Shri Samir Singh, Advocate.
Claimant

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/02/2018

1. Present is an appeal filed by the owner under Section 30 of the Workmen Compensation Act, 1923 assailing the award dated 06/08/2012 passed by the learned Commissioner, Workmen Compensation, Labour Court, Bilaspur (C.G.) in Claim Case No. 121/W.C.A./COC-1-B/08 (Non-Fatal).

2. The facts of the case in brief is that, the appellant is an owner of stone crusher plant located at Masturi, District Bilaspur (C.G.). The respondent No.1/claimant was a worker engaged at the said crusher plant by the appellant. In the course of operation of the said crusher plant, the

respondent No.1 sustained injuries on 06/06/2008. As a result of the said injuries, the claimant got her left hand amputated from elbow so also she has sustained fracture injuries on her right hand. She was immediately hospitalized and she continued to remain in hospital for treatment till 18/07/2008 i.e. for almost about 1 and ½ month. The District Medical Board issued the disability certificate to the respondent No.1 certifying that, she has suffered permanent disability of 75%.

3. The claimant subsequently filed the claim application before the Commissioner, Workmen Compensation which was registered as a claim case No. 121/W.C.A./COC-1-B/08 (Non-Fatal). The learned Commissioner vide the impugned award dated 06/08/2012 has allowed the same and have ordered that, the claimant shall be entitled for a compensation of Rs.4,26,510/- with interest @ 10% per annum. While passing the impugned award, the learned Commissioner has also imposed penalty of 25% quantified at Rs.1,06,628/-.

4. The contention of the counsel for the appellant/owner is that, the assessment of compensation at 100% by the learned Commissioner is erroneous and is contrary to the schedule provided under the Act and therefore the compensation awarded by the Tribunal deserves for suitable modification. He further submits that, no sufficient evidence is available on record so far as the loss of earning capacity is concerned. What is also under challenge is the fact that, the doctor was not examined to ascertain the disability part particularly the functional disability which resulted in the

loss of earning capacity and thus prayed for interfering with the impugned award.

5. Per contra, the counsel for the respondent No.1/claimant submits that, all the contentions put forth by the counsel for the appellant are all question of facts and that the appeal under Section 30 can never be entertained in case if there are no substantial question of law. The finding of facts cannot be disturbed by this Court in exercise of its power under Section 30 of the Workmen Compensation Act. He further submits that, the evidence which have come on record clearly establishes the employment and the injury part. It also stands proved that, the accident occurred at the premises of the present appellant and thus in the given circumstances, the finding of the learned Commissioner be upheld and prayed for the rejection of the appeal.

6. Perusal of record would show that, the claimant in support of her claim application has led an evidence of herself and further she has examined one Mangluram – the husband of the claimant and also an eye-witness who is a co-worker namely Kamla Bai – AW/3. There is not much which has been extracted from the cross-examination of these three persons with which the accident, the employment or the nature of injury could have been doubted at.

7. Further, what is also undisputed is the fact that, the appellant herein is prosecuted for the offence punishable under Section 287, 338 of IPC.

8. Thus, from the aforesaid evidence, the fact that the crusher plant was owned by the appellant and that the accident occurred on 06/06/2008 stands fully established.

9. Now question as to the percentage of disability which the claimant has suffered is concerned, true it is that the provision of employees compensation act in schedule 1 part 2 Sr.No.4 specifically provides that, the percentage of loss of earning capacity under such injuries would be 60%.

10. At this juncture it would be relevant to refer to the view of the Hon'ble Supreme Court in the case of **Pratap Narain Singh Deo v. Srinivas Sabata & Anr. [1976 1 SCC 289]** wherein in paragraph 5, it has been held as under:-

5. The expression “total disablement” has been defined in Section 2(1)(I) 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 as 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.”

11. The said judgment has further been reiterated in a series of decisions subsequently.

12. From the ratio which has been laid down by the Supreme Court in the aforesaid judgment, if we take into consideration the facts of the present case, the claimant in the instant case was a lady, aged around 30 years at the time of accident. As a result of the accident, she suffered the injury of amputation of her left hand from elbow. The claimant also had suffered fracture injury on her left leg. Further, it has been specifically stated in her deposition that, subsequent to the accident, she has not been able to perform any work which she was able to do prior to the accident and she has being rendered jobless and she is facing difficulties in meeting both ends meet. Similar statement has also been made by her husband in his evidence who has also in a very categorical terms stated that, by virtue of the accident, she has lost her employment and thereafter she has not been able to obtain work. There does not appear to be any cross-examination on this aspect.

13. From the aforesaid evidence what clearly reflects is that, the claimant in the instant case has lost her employment as a result of the accident which definitely can be brought within the ambit of total disablement or total loss of earning capacity.

14. Therefore, this Court does not find any strong case made out by the counsel for the appellant/owner calling for an interference with the impugned

award both on the question of quantum of compensation or on the aspect of the interest and penalty part.

15. The appeal thus being devoid of merits deserve to be and is accordingly rejected.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE