

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.1173 of 2014**

Reserved on 05.11.2019
Pronounced on 26.11.2019

Gurudeep Enterprises Engineering Fabricates And Contractor,
 Through Proprietor Surdeep Singh, S/o N.B. Singh, Office At
 25 E, Light Industrial Area, Bhilai, Tahsil And District Durg,
 Chhattisgarh. **---- Appellant**

Versus

Yogesh Kumar Verma, S/o Baldau Ram Verma, Aged About 19
 Years, R/o Village Arasnara, Post Office Nandkatthi, Tahsil And
 District Durg, Chhattisgarh. **---- Respondent**

For Appellant	:	Shri Ashish Surana, Advocate.
For Respondent	:	Shri Jitendra Gupta, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal

CAV Award/Order

1. This Miscellaneous Appeal has been preferred by Non-Applicant/Employer under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923') passed by the learned Commissioner, Employee's Compensation Act-cum-Labour Court Durg, District Durg (C.G.) (hereinafter referred to as the Commissioner) in Case No.55/W.C. Act/2008 Non-Fatal, by which the learned Commissioner has allowed the claim by awarding total amount of compensation to the tune of Rs.1,68,644/- with a direction to the Appellant to deposit the same within a period of 45 days,

else it shall carry interest at the rate of 12% per annum from the date of accident till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated the facts of the case are that the Applicant/Yogesh Kumar Verma, who was working as a helper in the establishment of the Non-Applicant/Gurdeep Enterprises Engineering Fabricates and Contractor, got injured badly while discharging his duties as such. On account of the said injury, his right leg got amputated during the course of his treatment. Based upon the aforesaid accident, a claim enumerated under Section 10 of the Act of 1923 has been made alleging *inter alia* that he was 19 years old and used to earn Rs.200/- per day while working as a helper and has suffered loss of earning capacity to the extent of 40% and, thus, claimed total amount of compensation to the tune of Rs.5,40,528/-.
3. The aforesaid claim has been contested by Non-Applicant while disputing the alleged occupation of the Applicant. It is pleaded that the applicant was engaged as a peon and not as a helper, as alleged by the claimant and, pleaded further that he was not permitted to enter into the workshop, yet he entered there, therefore, he himself was responsible for the alleged accident. It was denied further that his right leg was amputated or has suffered a loss of earning capacity to the extent of 40%. It is pleaded further that the entire expenses of

Rs.81,000/- incurred towards his treatment was borne by the Appellant/Non-Applicant and the father of the Applicant was paid a sum of Rs.1,00,000/- also on 16.09.2007.

4. In support, the Applicant has examined himself, one Chukeshwar Sahu and a Doctor, a member of the District Medical Board, while Non-Applicant examined himself in order to refute the Applicant's Claim.
5. After considering the evidence led by the parties, it has been held by the Commissioner that the Applicant has injured badly during the course of his employment and suffered loss of earning capacity to the extent of 40% by placing its reliance upon the disability certificate (Ex.P-7). It held further that the Applicant, a 19 years old, used to earn Rs.3,120/- per month and, in consequence awarded total amount of compensation to the tune of Rs.1,68,644/- ($\text{Rs.3,120} \times \frac{60}{100} \times 225.22 \times \frac{40}{100}$) by taking recourse to the provision prescribed under sub-clause (ii) of clause (c) of Section 4 (1) of the Act of 1923, alongwith the interest as mentioned hereinabove.
6. Being aggrieved, the Non-Applicant has preferred this appeal, which has been admitted for its hearing vide order dated 20.11.2014 on the following substantial question of law:-

“Whether the compensation awarded by the Commissioner assessing the disability of 40% was on the basis of any concrete proof and evidence or not?”

7. Shri Ashish Surana, learned counsel appearing for the Appellant submits that while passing the award impugned, the Commissioner has committed an illegality in considering the applicant's loss of earning capacity to the extent of 40% based upon the alleged certificate (Ex.P-7) in contravention to the provision prescribed under sub-clause (ii) of clause (c) of sub-Section (1) of Section 4 of the Act of 1923. According to him, the amount of compensation has to be assessed on the basis of the loss of earning capacity based upon the assessment of the qualified medical practitioner and in absence thereof, the award impugned as passed is, therefore, not at all sustainable in the eye of law. In support, he placed his reliance upon the decision rendered in the matter of **National Insurance Co. Ltd. Versus Mubasir Ahmed and Another** reported in **(2007) 2 SCC 349**.
8. On the other hand, learned counsel for the Applicant/Claimant while supporting the award impugned submits that the amount of compensation has been determined by the Commissioner, upon due and proper consideration of the alleged disability certificate (Ex.P-7), therefore, it does not require to be interfered.
9. I have heard learned counsel for the parties and perused the entire record carefully.
10. From perusal of the record, it appears that by relying upon the disability certificate (Ex.P-7) issued by the District Medical Board, Durg, the Commissioner arrived at a conclusion that

the Applicant has suffered permanent partial disability to the extent of 40% owing to the alleged accident and, consequent upon that the award impugned has been passed by taking recourse to the provision prescribed under Section 4(1)(c)(ii) of the Act of 1923 while awarding the amount of compensation as mentioned hereinabove.

11. In order to consider the substantial question of law framed, it is necessary to examine the relevant provisions prescribed under Chapter II of the Act which deals with Workmen's Compensation (the word "Workmen's" is substituted by the word "Employee's" by the Workmen's Compensation (Amendment) Act, 2009). Section 3 of the Act provides that, if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. Section 4 of the Act provides as to how the compensation should be determined where the injuries have resulted in (a) death; (b) permanent total disablement; (c) permanent partial disablement (due to injuries specified in Part II of Schedule I of the Act or due to non-scheduled injuries); and (d) temporary disablement, whether total or partial.
12. Section 4(1)(c) of the Act, which is relevant for determination of the issue in the present case, reads thus;

“4. Amount of compensation.-(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely-

(a)-(b)	*	*	*
(c) Where permanent partial disablement results from 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;		

Explanation-I.-Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation-II.-In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;”

(d) xxx xxx xxx

13. Section 2(g) of the Act defines the term “partial disablement” to mean, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of an employee

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. Similarly, Section 2(l) of the Act defines the term “total disablement” to mean, such disablement, whether of a temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement. The Proviso to Section 2(l) provides 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 the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

14. Part I of Schedule I of the Act contains the list of injuries deemed to result in permanent total disablement. Section 4(1) (a) deals with determination of compensation where death results from the injury. Section 4(1)(b) deals with determination of compensation in cases where permanent total disablement results from the injury, in which case the Commissioner has to determine whether the injury sustained by the employee has in

fact resulted in permanent total disablement or not. There is no need to decide the percentage of loss of earning capacity as a consequence of such permanent total disablement. Since it is assumed that the loss of earning capacity is 100% in cases where permanent total disablement results from the injuries specified in Part I of Schedule I of the Act. Therefore, Section 4(1)(b) does not contemplate any assessment of loss of earning capacity by a qualified medical practitioner.

15. However, Section 4(1)(c) of the Act, which deals with determination of compensation in cases where permanent partial disablement results from the injury, makes a distinction between the extent of 'physical disability' and the extent of 'loss of earning capacity'. In such cases compensation depends not on the extent of permanent partial disablement, but on the loss of earning capacity resulting from such permanent partial disablement. As per sub-clause (i) of clause (c), where permanent partial disablement has arisen from the injuries specified in Part II of Schedule I, then the percentage of loss of earning capacity will be as specified in the said Schedule. On the other hand, sub-clause (ii) of clause (c) provides that, where permanent partial disablement has arisen from the injuries which are not specified in Part II of Schedule I, i.e., 'non-scheduled' injuries, then the percentage of loss of earning capacity resulting therefrom has to be determined by the Commissioner, as assessed by the qualified medical

practitioner.

16. Explanation I to Section 4(1)(c) of the Act states that, where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries. Similarly, Explanation II states further that, in assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.
17. In the case in hand, the Commissioner while taking recourse to the provision prescribed under Section 4(1)(c)(ii) of the Act has awarded the aforesaid amount of compensation on finding that the Applicant has suffered permanent physical disability to the extent of 40% by placing its reliance upon the disability certificate (Ex.P-7).
18. In order to examine the said finding of the Commissioner as to whether the claimant has suffered permanent disability on account of the alleged accident or not and is entitled to get the aforesaid amount of compensation under the said provision, the Applicant has examined the member of Board namely Dr. B.P. Tiwari (AW-3). However, he has not stated anything except to state that he was the member of the said Board

when the alleged certificate (Ex.P-7) was issued. Thus, the alleged certificate could not have been corroborated by the member of Board. No other witness, much less the qualified medical practitioner was examined in order to show the kind of injury suffered by the Applicant, yet the award impugned has been passed by the Commissioner while taking recourse to Section 4(1)(c)(ii) of the Act of 1923.

19. Pertinently to be noted here that when the alleged certificate was not corroborated by the said member of the Board on his examination on 09.03.2010, an application was made immediately thereafter by the applicant on 26.03.2010 seeking for issuance of disability certificate from the District Medical Board. After considering the said application, it was allowed by the Commissioner vide order dated 26.03.2010 with a direction to the District Medical Board, Durg for issuance of the certificate in this regard. In pursuance thereof, the concerned Board has examined the Applicant and the certificate dated 28.05.2010 was submitted before the Commissioner through the Applicant on 09.06.2010. It, however, appears that without considering the said certificate, the award impugned has been passed by the Commissioner while observing that the Applicant has suffered permanent disability to the extent of 40% as shown in the alleged certificate (Ex.P-7).
20. At this juncture, the principles laid down in the matter of **National Insurance Co. Ltd.** (supra) are to be seen, where, at

paragraph 7, it has been observed by the Supreme Court as under:-

7. These cases related to injuries which were not specified in Schedule I and as such cases are covered by Section 4(1)(c)(ii) Explanation. In terms of Explanation II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in Schedule I. Explanation I also provides that where there are more than one injuries, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded.

21. By applying the aforesaid principles to the case in hand, coupled with non-examination of any of the qualified medical practitioner as required under sub-clause (ii) of clause (c) of Section 4(1) of the Act, vis-a-vis, non-consideration of the certificate furnished by the Applicant on 09.06.2010 in pursuance of the direction issued by the Commissioner vide its order dated 26.03.2010, it cannot be held that the disability of the Applicant to the extent of 40% as assessed by the Commissioner was based upon material piece of evidence. The substantial question of law is, thus, answered accordingly and the finding so recorded by the Commissioner is hereby set aside.
22. In view of the forgoing discussions, I hereby dispose of this

appeal by setting aside the award impugned passed by the Commissioner in Case No.55/W.C. Act/2008 Non-Fatal and remanded the matter back to the concerned Commissioner for the limited purpose to assess the loss of earning capacity of the Applicant/Claimant, who in turn shall re-fix the amount of compensation based upon such assessment in due consideration of the certificate dated 28.05.2010 submitted in pursuance to the order dated 26.03.2010 in accordance with law. The parties are hereby directed to remain present before the concerned Authority on 07.01.2020 for adjudication of the matter to the extent indicated hereinabove.

23. Needless to mention here further that the parties shall be allowed to adduce evidence again in support of their pleadings and the decisions shall be made by the concerned Commissioner as soon as possible in accordance with law.
24. Registry is directed to transmit the matter and entire record to the concerned Court of Commissioner, Employees Compensation Act-cum-Labour Court Durg, District Durg (C.G.), forthwith.

Sd/-
(Sanjay S. Agrawal)
Judge