

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 1125 of 2013

Virendra Kumar Sahu S/o Shri Mangal Ram Sahu, aged about 26 yrs, R/o Near Bazaar Chowk, Sahupara, Urla, P.S. Urla, Revenue Dist. Raipur, Tehsil and District Raipur (C.G).

---- Appellant

Versus

1. Manager, G.P. Ispat, near Urla Police Station, Urla, Dist. Raipur (C.G).
2. Joseph (Contractor), Through G.P. Ispat, near Urla Police Station, Urla, Dist. Raipur (C.G.) presently residing at Anugraha B-3/9, Sector-2, Udaya Society, Tatiband, P.S. Amanaka, Raipur, Revenue District Raipur (C.G.).
3. Manager, Bajaj Allianz General Insurance Company Ltd. Branch Office Shivmohan Bhavan, Pandri, Raipur (C.G.).

---- Respondents

For Appellant	: Mr. Pravesh Sharma, Advocate
For Respondents No. 1 and 2	: Mr. Rohitashva Singh, Advocate
For Respondent No. 3	: Mr. Bhaskar Payashi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

07/05/2019

1. This appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as "Act of 1923") (prior to 18/01/2010 known as Workmen's Compensation Act) against the judgment dated 04/07/2013 passed by Commissioner for Workmen's Compensation, Labour Court No. 2, Raipur, C.G. (hereinafter referred to as 'the Commissioner') in New Case No. 114/W.C.Act/2012 Non-fatal (Old Case No. 131/W.C. Act/2009 Non-

fatal) whereby the Commissioner has dismissed the application for grant of compensation holding that appellant has failed to prove disability and loss of income sustained by him due to injuries suffered by him.

2. Brief facts of the case are that appellant filed an application under Section 22-A of Act of 1923 mentioning therein that on 27/12/2008 when he was employed with respondents No.1 and 2 and working as Electrician, at that relevant time, he suffered an electric current, due to which, he sustained burn injuries over his person. In the aforementioned accident his 70% part of body got burned. He took treatment from 27/12/2008 at the hospital of Dr. Kedar Agrawal, Santa Colony, Raipur.
3. He pleaded in the application that he was hospitalized by respondents No. 1 and 2 and they gave only Rs.20,000/- for the purpose of treatment and thereafter they stopped giving any amount towards medical expenses etc. It was further pleaded that appellant was hospitalized for about more than three months in the hospital of Doctor Kedar Agrawal, but even then, he could not recover from the burn injuries fully. Thereafter, appellant with the help of family members shifted to the hospital of Doctor Kalda Nursing Home. It has been further pleaded that appellant expended about Rs.2,00,000/- in his treatment and suffered permanent disability as he is unable to work or move properly.

4. After some recovery from burn injuries, appellant met with his Advocate and sent a legal notice on 01/08/2009 to respondents No.1 and 2 which was refused by them and subsequently, respondent No. 2 who is an Advocate has replied to the notice sent to him vide notice dated 17/08/2008. It has been lastly pleaded that on the date of accident, he was getting wages/salary @ Rs.4,000/- per month and thereby calculated the amount of compensation as Rs.5,60,721/- against respondents No.1 and 2.
5. Respondents No. 1 and 2 submitted reply to claim application and denied all the facts mentioned in claim application with respect to the accident. It has been pleaded that respondents have already given the amount of compensation to the appellant and they have taken the burden of payment of entire medical expenses of the appellant. They have denied the relation of employee and employer between appellant and respondents. It has been further pleaded that respondents No. 1 and 2 taken policy for Workmen working under their employment from the Insurance Company i.e. Bajaj Allianz General Insurance Company Limited, which has been impleaded in the application as respondent No. 3 subsequently.
6. Respondent No.3/Insurance Company also denied the entire claim of appellant and stated that the accident did not take place in the insured premises, therefore, Insurance Company is not liable for payment of any amount of compensation to the said workmen/employee.

7. The Commissioner, after taking into consideration the pleadings and evidence led by respective parties framed as many as five issues for consideration and found that the appellant/workmen failed to prove the percentage of disability suffered by him with respect to his earning capacity. The Commissioner on appreciation of pleading and evidence available on record arrived at a conclusion that the appellant-workman failed to prove important fact that due to injuries suffered by him in his employment, he suffered permanent/temporary or partial disablement and thereby causing loss of his earning capacity.
8. Learned counsel for appellant submitted that immediately after the accident, appellant was taken by respondents No. 1 and 2 to the hospital of Dr. Kedar Agrawal, Santa Colony, Raipur. and borne all the expenses incurred therein, but they have not paid or provided any financial assistance for the expenses of Kalda Nursing Home at Raipur. He further submitted that in the reply of notice issued by counsel for appellant, respondents No.1 and 2 pleaded with respect to the expenditure of Rs.2,30,000/- which are of the hospital of Dr. Kedar Agrawal and also undertaken to provide further assistance for his medical treatment, but they have not been paid. As per his argument medical expenditure which he incurred in Dr. Kalda hospital was against Rs.41,00,000/- and other medical bills with respect to purchase of medicines etc. was Rs.11,400/-. He also submitted that as per the provisions of Section 4(2A) of Act of 1923, the Act has

imposed liability on the employer to bear actual medical expenditure incurred by employer during his treatment for the injuries which was caused during the course of employment.

9. Per contra, learned counsel appearing for respondents No. 1 and 2 jointly submitted that the finding with respect to relationship of employer and employee is not disputed and immediately after the accident, appellant/employee has been taken over by the employer to the best hospital at Raipur and they have borne all the medical expenditure of the hospital of Dr. Kedar Agrawal. They have further submitted that medical expenses of Dr. Kedar Agrawal's hospital was about Rs.2,30,000/- which they have borne and paid, but appellant himself without intimating to the employer has left the hospital where he had been treated for about more than three months and was recovering slowly, therefore, he is not entitled for any amount as claimed and pleaded by him with respect to the treatment of Kalda Nursing Home at Raipur. He further submitted that provisions of sub-section (2A) of Section 4 of Act of 1923 as relied upon by the learned counsel for appellant was inserted by way of an amendment which came into effect from 08/01/2010, whereas the date of accident is 27/12/2008, therefore, the provisions of sub-section (2A) of Section 4 of Act of 1923 would not be applied retrospectively. He lastly submitted that under the Act of 1923, there is no provision for reimbursement of actual medical bills and claims as made by the employee.

10. I have heard learned counsel appearing for parties and perused the record carefully.
11. Appeal was admitted vide order dated 01/10/2015 on following substantial questions of law :-

“(a) Whether the learned courts below justify in the eye of law by dismissing the claim application filed under Section 22-A of the Workman Compensation Act, 1923?

(b) Whether the learned courts below justified in the eye of law by not assessing the disability of the appellant/applicant on the basis of medical evidence which had been produced before him?

(c) Whether the learned courts below justified in the eye of law by coming to the conclusion that incident was not arise during the course of the employment?”

12. So far as it relates to first question of law, the appellant in his claim application has pleaded that due to 70% burn injury sustained by him, he suffered permanent disability and he is unable to stand. He further pleaded that he expended about Rs.2,00,000/- towards medical expenditure, but appellant has not placed on record any medical certificate issued by treating doctor or Medical Board to show that he suffered disability of permanent nature. He has only filed bed head ticket/discharge ticket of two hospitals showing line of treatment and some of his photographs. Permanent disability suffered by workman is to be proved by the document issued by expert person i.e. doctor who is having expertise in a particular field. Appellant even

has not pleaded and stated in his evidence that on which part of his body, he suffered permanent disability.

13. The Act of 1923, provides list of injuries deem to resulting permanent total disablement in Schedule-I appended to Act of 1923. Part-1 of Schedule-I deals with nature of injuries causing 100% loss of workman capacity and Part-2 mentions the list of injuries showing certain percentage of loss of earning capacity of a workman due to injuries suffered by him.
14. From perusal of documents placed on record by appellant in his evidence, it does not mention about loss of any part of body or any amputation of any part of body, therefore, when disability cannot be assessed by physical appearance of workman, then it is duty of workman to specifically plead and prove that he suffered permanent disability on a particular limb or part of body, in which, appellant utterly failed.
15. There is admission on the part of appellant that immediately after accident, he was taken to the hospital by employer where he was treated for more than three months but could not able to specifically mention that who borne the expenses of hospital. Though the appellant has stated that he took further treatment at Kalda Nursing Home and expended about Rs.2,00,000/- is concerned, perusal of records would show that appellant survived from severe injuries by getting continuous treatment of more than three months, but, he suddenly left the hospital of Dr. Kedar Agrawal without intimating to

the employer and is claiming that he has taken treatment in Kalda Nursing Home. The condition of appellant looking to initial injuries of 70% burn itself shows that appellant was recovering from the injuries slowly. Ex. P-21 which is discharge ticket of Dr. Kedar Hospital mentions that discharge on request. Even it is not a case of appellant that doctor himself discharged him.

16. Section 3(1) of the Act of 1923 is reproduced herein below :

“3. Employer's liability for compensation.-(1) 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 this Chapter: Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the [employee] for a period exceeding [three] days; (b) in respect of any [injury, not resulting in death [or permanent total disablement] caused by] an accident which is directly attributable to

(i) the [employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the [employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of [employees], or

(iii) the willful removal or disregard by the [employee] of any safety guard or other device which he knew to have been provided for the

purpose of securing the safety of [employee],
[***]. [***]"

17. From perusal of specific provisions provided under the Act of 1923, it refers to the personal injury caused to workman during course of his employment, his employer shall be liable to pay compensation in accordance with provisions of this Chapter. Section 3(1)(a) of Act of 1923 specifically provides the period from which personal injury is to be teated as total or partial disablement of workman.
18. In the case at hand, undisputedly, appellant suffered injuries arising out of and in the course of his employment and he took continuous treatment in two hospitals from 27/12/2008 to 24/04/2009 as inpatient vide Exs.P-21 and Ex.P-22. Looking to percentage of burn injuries and length of treatment taken by appellant, definitely after his discharge from hospital, he has to take further bed rest for couple of months.
19. The Commissioner has not taken into consideration all the provisions of Act of 1923, but has considered the provisions of Section 4 of Act of 1923 only. There are ample evidence available on record showing that due to injuries suffered by appellant-workman arising out of and in the course of his employment, appellant took treatment as inpatient for several months. Commissioner failed to calculate the amount of compensation as provided under Chapter-II of Act of 1923 and dismissed the claim application only on the ground that appellant

failed to prove the percentage of permanent disability suffered by him.

20. Section 4 of the Act of 1923 is reproduced herein below :

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

(a) where death results from the injury :- an amount equal to [fifty per cent.] of the monthly wages of the deceased [employee] multiplied by the relevant factor;

or

an amount of [one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to [sixty per cent.] of the monthly wages of the injured [employee] multiplied by the relevant factor;

or

an amount of [one lakh and twenty thousand rupees], whichever is more;

[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).]

Explanation I.- For the purposes of clause (a) and clause (b), "relevant factor", in relation to [an employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the

same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due.

(c) where permanent partial disablement result from the 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) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per

cent. of monthly wages of the [employee], to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to [an employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such [employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the [employee] in accordance with the law of that country.]

[(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.]

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day--

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the [employee] is entitled the amount of any payment or allowance

which the [employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the [employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.- Any payment or allowance which the [employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.]

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the [employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the [employee] towards the expenditure of the funeral of such [employee] or where the [employee] did not have a dependant or was not living with his dependant at the

time of his death to the person who actually incurred such expenditure.]

[Provided that the Central Government may, be notification in the Official Gazette, from time to time, enhance the amount in this sub-section.]”

21. Even if, appellant has failed to prove the percentage of permanent disablement, but from the material and evidence available on record, appellant has able to prove his case under the provisions of Section 4(d) of Act of 1923, for which calculation is to be made on the basis of Section 4(2) of Act of 1923.
22. In view of aforementioned facts and evidence available on record, finding recorded by learned Commissioner that appellant-workman has failed to prove his case is not sustainable and is liable to be set aside.
23. Second question of law which has been framed with respect to the assessment of disability of appellant on the basis of medical evidence, which has been produced before him is concerned, medical evidence was clear enough to show that from the date of accident, appellant-workman could not able to perform his regular work, for which he was engaged by his employer for more than three months and thereby he suffered disablement. As appellant-workman took treatment as inpatient in two different hospitals continuously for about four months and even thereafter, looking to the injuries suffered by him and nature of treatment, he had to take bed rest for

further period, therefore, the provisions of Section 4(1)(d) of Act of 1923 is attracted. The appellant suffered disablement as provided under Section 4(1)(d) of Act of 1923, but Commissioner has failed to calculate amount of compensation as provided under the law in favour of appellant-workman.

24. In view of above, second question of law is also decided in favour of appellant-workman.
25. So far as third question of law is concerned, statement made by learned counsel for appellant does not stand that learned Commissioner dismissed the claim application holding that accident was not taken during course of employment. In fact, in concluding part of paragraph-10, the Commissioner specifically held that appellant able to prove that he suffered injuries in an accident during the course of his employment, therefore, third question of law is decided against the appellant-workman.
26. In view of aforementioned discussions, it is clear that Commissioner dismissed the claim application of appellant-workman only on the ground that appellant-workman failed to prove the percentage of loss of hearing capacity due to permanent disability suffered by him and ignoring the other provisions of Sections 3 and 4 of Act of 1923, for which appellant-workman is entitled for the amount of compensation.
27. In the result, appeal is allowed in part and the matter is remanded back to the Court of Commissioner for Workmen's Compensation, Labour Court No. 2, Raipur, C.G. for assessing disablement suffered

by appellant-workman, if any, under the provisions of Section 4(1)(d) of Act of 1923. Needless to mention that the parties will be at liberty to produce further evidence if any.

28. Parties are directed to appear before the Court of Commissioner for Workmen's Compensation, Labour Court No. 2, Raipur, C.G. on 29/07/2019.
29. Records be sent back forthwith to the concerned Court.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh