

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 881 of 2014**

- The Oriental Insurance Company Limited, through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, District Bilaspur (CG)

---- Appellant**Versus**

1. Khel Singh, S/o Phirturam Patel, aged about 29 years, R/o Renki, P.O. Chainpur, Tah. Pali, Distt. Korba C.G.
2. S.B. Power Plant, Through its Director, Village- Renki, P.O. Chainpur, Tahsil Pali, District Korba (CG)
3. M/s S.S. Construction, Throught its Director, Main Road, Korba, Tahsil & Distt. Korba (CG)
4. Krishna Sahu, Petty Contractor, M/s S.S. Construction, Village- Newsa, Hardi Bazar, Tahsil Pali, District : Korba (CG)

---- Respondents

For Appellant	:	Mr. R.N. Pusty, Advocate
For Respondent No.1	:	Mr. Kalyan Kalamkar, Advocate under the authority of Mr. Abhijeet Sarkar, Advocate

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****04/08/2020**

1. Appellant Insurance Company has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 (for short 'the Act of 1923') challenging the judgment/award dated 27.6.2014 passed by the Commissioner, Employees Compensation Act-cum- Labour Court, Korba (henceforth 'the

Commissioner') in Case No.45/ E.C.Act/2011/Non-fatal by which the Commissioner partly allowed claim application of claimant/ respondent No.1 herein and awarded a total sum of Rs.3,81,222/-as compensation.

2. Facts relevant for disposal of this appeal are that claimant/ respondent No.1 was working as Labourer in the plant site of non-applicant No.1 / respondent No.2. On 10.12.2009, claimant/respondent No.1 was doing the arrangement of the work of laying slab (centring) and in that process he fell down and received fracture injury on his leg. He was immediately hospitalized in the Nursing Home of Dr. Surjeet Singh where he was treated, however, he could not cure completely and he has suffered permanent disability.
3. Claimant/respondent No.1 filed an application under Section 22 of the Act of 1923 before the Commissioner seeking compensation of Rs.8,07,343/- due to permanent disablement sustained by him on account of an accident arising out of and in the course of his employment. It has been mentioned in the application that on the date of accident, claimant was aged about 28 years and earning wages of Rs.6,353/- per month, however, due to permanent disability suffered by him, he is unable to do any work and earn anything.
4. Non-applicant No.1/respondent No.2 filed reply to application admitting the fact of engagement of claimant/respondent No.1 as labourer through non-applicant No.3/respondent No.4, who was making payment of wages to claimant-workman. Non-

applicant No.2 had obtained insurance policy from non-applicant No.4/ appellant herein covering the risk of employees working in the plant site from 12.09.2009 to 11.09.2010. Since the policy was valid on the date of accident i.e. on 10.12.2009, the Insurance Company is liable to make payment of compensation to the claimant/workman.

5. Non-applicant No.2 is a construction company to whom work of construction of SB Power Plant was awarded. This non-applicant has also submitted reply to application mentioning therein that claimant-workman was working under non-applicant No.3. Claimant-workman was insured under the policy issued by non-applicant No.4 Insurance Company. Age of claimant has been disputed by this non-applicant for want of documentary proof.
6. Non-applicant No.3, Petty Contractor, also submitted his reply to application pleading therein that claimant / workman / respondent No.1 was working as Labourer within the premises of non-applicant No.1 under the employment of non-applicant No.2 and supervision of non-applicant No.3. He has denied the fact that claimant-workman has suffered permanent disability on account of injuries sustained by him in the accident arising out of or in the course of his employment.
7. Non-applicant No.4-Insurance Company also submitted its reply to application filed by claimant-workman and denied the fact for want of knowledge that place of accident is the premises of non-applicant No.1 who engaged non-applicant

No.2 as Contractor and who, in turn, had sub-contracted the work to non-applicant No.3. Non-applicant No.4 had also denied the fact of engagement of claimant-workman under the supervision of non-applicant No.3 in the premises of non-applicant No.1. Employment and income of claimant-workman pleaded in the application have also been denied by non-applicant No.4-Insurance Company. It was also pleaded that as per work order dated 7.8.2008 issued by M/s Mytas Infra Limited, only 30 skilled workmen & 20 unskilled workmen engaged in the civil construction work of power plant and office building in village Renki had been insured for the period commencing from 12.09.2009 to 11.09.2010. Any sub-contractor, non-applicant No.3 or employees working under him has not been insured by non-applicant No.4-Insurance Company, therefore, non-applicant No.4 is not liable to make payment of amount of compensation to the claimant, if any awarded by the Commissioner.

8. On the basis of pleadings of the parties, the Commissioner has framed as many as nine issues for consideration and after conclusion of proceeding, the Commissioner partly allowed application of claimant-workman and awarded an amount of Rs.3,81,222/ as compensation considering the loss of earning capacity as 100% and taking monthly income of claimant-workman as Rs.3,000/-. While partly allowing the application, the Commissioner has recorded that non-applicant No.1 has given contract for construction of power plant to non-applicant

No.2, who, in turn, sub-contracted the work to non-applicant No.3; on the date of accident, claimant-workman was in the employment of non-applicant No.3 and he suffered fracture injury in his left leg on account of accident arising out of and in the course of his employment, resulting in 100% permanent disability.

9. This appeal has been admitted for consideration on the following substantial questions of law;-

1. Whether the Commissioner was justified in awarding payment for 100% disability when admittedly the claimant was a polio patient and was 50% disable prior to the accident?
2. Whether the Insurance Company would be liable for the payment of compensation in respect of the employees engaged by sub-contractor working under the main contractor?

10. Mr. Pusty, learned counsel representing appellant Insurance Company submits that finding recorded by the Commissioner that claimant-workman suffered 100% permanent disability on account of fracture injury suffered by him in an accident arising out of and in the course of his employment is perverse and contrary to materials available on record. The left leg of claimant-workman is already polio affected, therefore, the Claims Tribunal ought not to have held that claimant-workman has suffered 100% disability on account of accident arising out of and in the course of his employment. At the most, the disability of claimant-workman could be assessed at 50% in the given facts and circumstances of case. Learned counsel

further submits that as per pleadings in application itself, claimant-workman was engaged by non-applicant No.3 and not by non-applicant No.2 in whose name insurance policy was issued covering risk of employees engaged by it, therefore, the Insurance Company should not have been held liable to make payment of amount of compensation to claimant-workman.

11. On the other hand, Mr. Kalamkar, learned counsel appearing on behalf of respondent No.1-claimant supports the award passed by the Commissioner.
12. So far as the first limb of argument raised by learned counsel for appellant is concerned, perusal of pleadings made by respondent No.1-workman in his application filed under Section 22 of the Act of 1923 shows that on account of fracture injury suffered by him on his leg, he has become permanently disabled and in support thereof, he has produced permanent disability certificate dated 20.8.2010 issued by District Hospital, Korba certifying that he has become 100% disabled. Respondent No.1-workman has deposed in his evidence that on account of fall from a considerable height, he sustained fracture injury in his left leg. After the accident, he took treatment from Dr. Surjeet Singh of Korba. In order to prove disability certificate, respondent No.1 has examined Dr. Rudrapal Singh Kanwar (AW-2), who was one of the Members of the Medical Board which has issued disability certificate to claimant/respondent No.1. This witness has stated in his

evidence that after examination of respondent No.1, it is noticed that he has taken treatment from a private hospital of neck femur fracture injury in left leg, which was already affected with polio (Post Perennial Residual Paralysis). He has further stated that on the basis of 50% disability due to polio and 50% disability due to injury suffered in accident, he has given certificate of 100% disability. In the cross-examination, this witness has specifically stated that disability has been assessed as per guidelines of the Central Committee and not under the Act of 1923. This witness has further stated that 100% disability is with respect to whole body.

13. Respondent No.1 has affixed his photograph on the application filed under Section 22 of the Act of 1923 and a glance of same would show that he is standing only on his right leg. Disability certificate (Ex.P-1) shows that the Medical Board has assessed the permanent disablement of respondent No.1 at 100%, adding that the condition is not likely to improve and reassessment was also not recommended.

14. In the light of evidence of Dr. Rudrapal Singh Kanwar (AW-2), particularly Para-2 of his statement wherein he has stated that claimant-workman was totally unable to walk from injured leg and there is no possibility of curing of injured leg in future, the question which arises for consideration of this Court is as to what will be the percentage of loss of earning capacity of

claimant-workman under the Act of 1923?

15. Section 4 of the Act of 1923 deals with 'amount of compensation'. Section 4 (1) (a) deals with the case where death results from the injury. Section 4 (1) (b) deals with determination of compensation in cases where permanent total disablement results from injury. Section 4 (1) (c) deals with permanent partial disablement resulting from injury. Section 4 (1) (c) (ii) deals with a case where injury is not specified in Schedule-I. This clause postulates that where permanent partial disablement has arisen from the injury which is not specified in Part-II of Schedule I, then the percentage of loss of earning capacity resulting therefrom has to be determined by the Commissioner, as assessed by the qualified medical practitioner. Section 4 (1) (c) (ii) is as follows:-

“(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.”

16. In the case at hand, after the accident, the claimant-workman submitted himself before the Medical Board for issuance of disability certificate and after examination, the Medical Board issued a certificate certifying that he has suffered 100% permanent disablement. One of the members of the Medical Board has been examined by the claimant-workman before

the Commissioner, who has also stated in his evidence that 100% disablement suffered by claimant-workman is with respect to his whole body.

17. The Commissioner has assessed the loss of earning capacity of claimant-workman at 100% taking into consideration the fact that left leg of claimant-workman is already polio affected and on account of injury sustained by him in his left leg, he has completely become disabled to do his work as he was doing prior to accident.

18. In case of **Pratap Narayan Singh Deo Vs. Srinivas Sabata & another** reported in **(1976) 1 SCC 289**, Hon'ble Supreme Court while considering issue of 'loss of income' to a workman on account of disability suffered by him on a part / limb of the body, has held as under:-

“4. It has not been disputed before us that the injury in question was caused to the respondent by an accident which arose out of and in the course of his employment with the appellant. It is also not in dispute that the injury resulted in amputation of his left arm at the elbow. It has however been argued that the injury did not result in permanent total disablement of the respondent, and that the Commissioner committed a gross error of law in taking that view as there was only partial disablement within the meaning of Section 2 (1) (g) of the Act which should have been deemed to have resulted in permanent partial disablement of the nature referred to in item 3 of Part II of Schedule I of the Act. This argument has been advanced on the ground that the amputation was from 8" from tip of acromion and less than 4 1/2" below tip of olecranon. As will appear, there is no force in this argument.

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

"(1) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a 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. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established."

19. Recently, in case of **Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Co. Ltd.** reported in **(2020) 1 SCC 796**, where the claimant suffered injuries on his right leg resulting into complete disability to continue his vocation, Hon'ble Supreme Court after taking note of its earlier decisions in cases of *K. Janardan v. United India Insurance Co. Ltd.* reported in (2008) 8 SCC 518 and *Raj Kumar vs. Ajay*

Kumar reported in (2011) 1 SCC 343 has held thus:-

“14.The aforesaid judgments are instructive for assessing the compensation payable to the Appellant in the present case. As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving license. The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the Appellant must be assessed as 100%.

15.We affirm the judgment of the High Court on assessing the income of the Appellant at Rs. 4000 p.m. as per the evidence of his employer. The “functional disability” of the Appellant is assessed as 100%, and the relevant factor would be 201.66 as per Schedule IV to the Act. Consequently, the compensation payable to the Appellant would work out to Rs. 4,83,984/- under Section 4 of the Act.”

20. Let us examine the facts and evidence available on record of case at hand in the light of above decisions of Hon'ble Supreme Court.

21. From the discussions of facts and evidence of present case made in preceding paragraphs, it is clear that respondent No.1 was employed and working on site as 'workman' and that the accident took place on site while the workman was under employment, which is not even disputed by appellant herein. Engagement of respondent No.1 as 'workman' by the construction company in construction work itself shows his ability to do the work of such nature, even if his injured leg was affected with polio, and earn wages. It is only after the accident occurred during the course of employment,

respondent No.1-workman suffered permanent disability on account of accidental injuries. The doctor (AW-2) has stated in his statement that permanent disability was 50% due to polio and 50% due to accidental injury, but what is important to be considered is that only because of injury arising out of an accident in the course of employment, respondent No.1-workman became totally disabled, otherwise he was working on a construction site. The object of the Act of 1923 to protect the workman as far as possible from hardship arising out of accident.

22. Thus, keeping in mind the decisions of Hon'ble Supreme Court in Pratrapp Narayan Singh Deo's case (supra) & Chanappa Nagappa Muchalagoda's case (supra); the object of the Act of 1923 and considering the evidence of the doctor (AW-2) that disability is for whole body, and that only after the accidental injuries suffered by respondent No.1-workman during the course of employment, he became permanently disabled and cannot walk without crutches, we are of the view that the Commissioner was perfectly justified in awarding compensation considering permanent disability at 100%, as mentioned in the medical certificate issued by the Medical Board. Consequently, first question of law framed for disposal of this appeal is answered in affirmative.

23. Coming to second argument advanced by learned counsel for appellant. Perusal of insurance policy, which is available on

record as Ex.D-1, reveals that it has been issued in the name of 'M/s S.S. Construction' and the period of insurance is from 12.09.2009 to midnight of 11.09.2010. In this policy, the site of work has been mentioned as '30SW20USW Hardi Bazar, Korba' and trade description has been given as 'civil construction of power plant & office building coal washery at village Renki". From perusal of insurance policy and reply filed by the Insurance Company, it is apparent that risk of 30 skilled workers & 20 unskilled workers employed for civil construction work of power plant & office building coal washery at village Renki, was covered under the said policy for a period of one year commencing from 12.9.2009 and ending on 11.9.2010. There is no mention of name of any skilled or unskilled worker in the policy. Admittedly, the workman/respondent No.1 herein while working as labourer in the premises of M/s SB Power Plant, Village Renki, for which place the insurance policy was issued by appellant Insurance Company, has met with an accident and sustained injuries which has resulted in his permanent disablement. Sub-contract awarded to non-applicant No.3 cannot be considered to be a separate contract, rather it is a part & parcel of the contract awarded to the principal Contractor i.e. non-applicant No.2, who has engaged a Petty Contractor to carry out construction work at the site.

24. In view of above, we are of the view that the Commissioner has not committed any illegality or infirmity in holding the

appellant Insurance Company liable to make payment of compensation to the claimant-workman. The insurance company is liable for the payment of compensation in respect of employees engaged by sub-contractor working under the principal contractor. Accordingly, the second question of law is also answered in affirmative.

25. In the result, the appeal fails and is accordingly dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-