IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.652 OF 2010

Bechu Ramfer Rajbhar ...Appellant

Versus

1. Mohmmed Iqubal A. Hasan
2. Mrs. Sakina Fakrudin Tinvala
3. United India Insurance Co. Ltd. ...Respondents

...

Mr. T.J. Mendon for the Appellant.
Ms Varsha Chavan for the Respondent -Insurance Company.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 7th OCTOBER, 2022.

JUDGMENT :-

1. The Appellant herein has challenged the judgment and order dated 20/02/2010 passed by the learned Commissioner for Workmen's Compensation, Labour Court, Thane, in Application (WCA) No.57/C-13 of 2002.

2. By the impugned judgment, the learned Commissioner has directed Respondent No.2-owner of the Truck and Respondent No.3-Insurance Company to pay to the Appellant jointly and severally compensation of Rs.1,84,758/-within one month from the date of the order. Respondent No.2 is also directed to deposit penalty of 30% and interest of 12% on the compensation from the date of the application

i.e. 11/02/2000 till final realization.

3. The brief facts necessary to decide this appeal are as under:-

The Appellant who was 23 years of age, was working as a Cleaner on Motor Truck No.MTT-8268 and drawing salary of Rs.2,000/- per month. The said vehicle was owned by Respondent No.1 and subsequently transferred to Respondent No.2. It is not in dispute that the said truck which was insured with Respondent No.3 – Insurance Company met with an accident on 02/03/2000. The Appellant who was on duty on the said vehicle sustained injuries resulting in amputation of left hand below elbow with 70% permanent disablement. The Appellant claimed that he is unable to work as a Cleaner because of the injury sustained in the said accident and that the functional disability is of 100%.

4. Respondent No.1 filed his reply at Exhibit-5 stating that he had already sold the vehicle to Respondent No.2. Respondent No.1 claimed that the Appellant was in employment of Respondent No.2 and denied his liability to pay compensation to the Appellant.

5. Respondent No.2 denied that the Appellant was working with her as a Cleaner and further denied that there was any employer-employee relationship with the Appellant. She denied that the Appellant had sustained injuries in the course of the employment which would entitle him for any compensation.

6. Respondent No.3 – Insurance Company raised a defence that it is not liable to indemnify the insured for want of employer-employee relationship.

7. Based on the rival pleadings, the Labour Court framed the issues and upon considering the evidence adduced by the respective parties recorded a finding that there was employer-employee relationship between the Appellant and Respondent No.2. The learned Commissioner also recorded a finding that the Appellant had met with an accident in the course of his employment, which had resulted in amputation of left hand below elbow. Considering the age of the Applicant as 23 years, his income of Rs.2,000/- per month, the disability at 70% and upon applying the age factor of 219.95, the Commissioner computed compensation of Rs.1,84,758/-, which was made payable along with interest @ 12% from the date of the

application till final realization.

8. Mr. Mendon, learned counsel for the Appellant submits that the injuries sustained by the claimant in an accident resulted in functional disability of 100%. He, therefore, contends that the Commissioner was not justified in assessing loss of future income at 70%. In support of his contention he has relied upon the decision of the Hon'ble Supreme Court in ***Channappa Nagappa Muchalagod vs. Divisional Manager, New India Assurance Co. Ltd., 2020 ACJ 704.*** He has relied upon the decision of the Apex Court in ***Pratap Narain Singh Deo vs. Shrinivas Sabata and Anr. 1976 ACJ 141*** and ***Oriental Insurance Co. Ltd. vs. Siby George and Ors. 2012 ACJ 2126*** to contend that the interest is payable from the date of the accident.

9. Per contra, Mrs. Varsha Chavan, learned counsel for the Respondent No.3-Insurance Company submits that the injury sustained by the Appellant is a scheduled injury and as such the Commissioner has rightly assessed loss of income at 70%. She further submits that the compensation has been determined in terms of the provisions of Workmen's Compensation Act and the assessment of compensation does not justify any interference. She further submits that under the

provisions of the Act, the interest is payable from the date of the application and not from the date of the accident.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. It is not in dispute that at the time of the incident, the Appellant was 23 years of age and was working as a Cleaner on the Truck bearing No.MTT-8268 and drawing salary of Rs.2,000/- per month. The said Truck was owned by Respondent No.1 and was later transferred to Respondent No.2-Mrs. Sakina Tinvala. The said Truck had met with an accident while the Appellant was on duty, resulting in amputation of his left hand below the elbow.

12. The insured, transferee (Respondent No.2) as well as the insurer have not challenged the finding that the Appellant had sustained injuries in an accident arising out of and in the course of his employment. The question is only as regards the loss of actual earning capacity of the Appellant.

13. In this regard, it is relevant to note that the Appellant was working as a Cleaner on a goods vehicle. He was required to load and

unload drums. He has deposed that since the accident, he is unable to work as a Cleaner. He has stated that the employer has refused to employ him since he is unable to work as a Cleaner. The evidence of the Appellant that since the accident, he has not been able to work as a Cleaner and earn his livelihood, has gone unchallenged. Though the disability is assessed at 70%, the evidence of the Appellant amply proves that the Appellant is unable to work as a cleaner and earn his livelihood.

14. In ***Channappa Nagappa*** (supra) the driver of a heavy vehicle had suffered serious injuries to his right leg resulting in permanent disablement to the extent of 37%. The Commissioner, while assessing the compensation had considered the loss of future income as 50%, whereas the High Court had held that the assessment of the Commissioner at 50% was on the lower side and increased it to 60 % since the Appellant was unable to stand for along time. The Honourable Supreme Court observed that the Appellant was permanently incapacitated and was unable to pursue his vocation as a driver. The Apex Court referred to the decision in ***Raj kumar vs. Ajay Kumar 2011 ACJ 1 (SC)*** wherein it was held thus:

> *"9....It is the admitted position that the appellant can no longer pursue his vocation as a driver of*

heavy vehicles. The medical evidence on record has corroborated his inability to stand for a long period of time, or even fold his legs. As a consequent, the appellant has got permanent incapacitated to pursue his vocation as a driver.

This Court in Raj Kumar v. Ajay Kumar, 2011ACJ 1 (SC) held that:

> *"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability [sic disability] (this is also relevant for awarding compensation under the head loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii)whether he was prevented or restricted from discharging his previous activities and functions,but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the*

claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even any thing more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there maybe a duplication in the award of compensation. Be that as it may. (Emphasis supplied)

10. In K. Janardhan v. United India Insurance

Co. ltd., 2008 ACJ 2039 (SC), this court examined the loss of earning capacity in the case of a tanker driver who had met with an accident and lost one of his legs due to amputation. The Commissioner for Workmen's Compensation assessed the functional disability of the tanker driver as 100 percent and awarded compensation on that basis. The High Court, however, referred to Schedule I to the Workmen's Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60 percent of earning capacity. This court set side the judgment of the High Court and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100 percent. In Suresh vs. Oriental Insurance Co. Ltd., 2010ACJ 487 (SC), this Court held that:

> *(8)... We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of accident resulting in the said disablement. Therefore, he has lost 100 percent of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving license under the Motor Vehicles Act."*

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 licence. 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 percent."

15. In the instant case the Appellant was a young boy of 23 years of age. He was working as a Cleaner and in view of amputation of his left hand below elbow, he is unable to work as a Cleaner and unable to earn his livelihood. Hence, the functional disability is assessed at 100%. Considering the age, income, the extent of disability and taking 219.95 as the relevant factor, as per Schedule IV of the Act, the compensation payable to the Appellant under Section 4 of the Act works out to Res.2,63,940/-. The interest payable under the Act in view of the decision of the Hon'ble Supreme Court in ***Siby George*** (supra) is payable from the date of the accident till realization.

16. Under the circumstances and in view of discussion (supra) the appeal is allowed. It is held that the Appellant is entitled for compensation of Rs.2,63,940 with interest @ 12% from the date of the accident till final realization.

17. It is stated that Respondent No.3-Insurance Company has deposited the compensation as per the impugned Judgment. The Insurance Company to deposit the balance amount within a period of four weeks from the date of uploading of this Judgment.

(SMT. ANUJA PRABHUDESSAI, J.)