

25.07. 2023
item No.2
n.b.
ct. no. 551

FMA 255 of 2009

Sk. Wajed

Vs.

National Insurance Co. Ltd. & Anr.

Mr. Samiran Giri,
Ms. Madhumita Patra,
... for the appellant.

Mr. P.K. Pahari
.....for the respondent

The instant appeal has been preferred against the judgment dated March 6, 2006 passed by the learned Judge MAC Tribunal, Contai in MAC case No. 114 of 2002. Only single point is involved in the appeal.

The claim application was preferred by the claimant before the learned Tribunal on the ground that he is sustained injuries in a road traffic accident wherein his disability was calculated by the Medical Board to be 70%. But at the time of passing the impugned award, learned Tribunal has considered his disability to be 40%.

Learned advocate for the appellant submitted that the learned Tribunal has assessed the compensation on the basis of 40% disability, which is erroneous. Before calculating the compensation, learned Tribunal must have forwarded the claimant to the Medical Board to assess present disablement. However, there is no ground to disregard the percentage of disability of the claimant as assessed by the Medical Board. He submitted before this Court that the observation of the learned Tribunal in that

regard is liable to be set aside and the compensation of the case should be awarded considering the claimants disablement over 70%.

Learned advocate appearing on behalf of the Insurance Company raised strong objection and submitted before this Court that the impugned award passed by the learned Tribunal suffers no illegality. He also pointed that learned Tribunal has come to a conclusion after perusing the entire record that the disability of the deceased is not more than 40%. The observation of the learned Tribunal is very much correct in assessing the facts and circumstances of the particular case. There is no perversity in the impugned order, which cannot be set aside.

In support of his contention he cited a decision of Hon'ble Supreme Court passed in ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in **2011 ACJ 1**.

Heard the learned advocates and perused the papers including the disability certificate issued by the Board of Doctors of Contai Hospital. I have also perused the evidence of P.W. 1.

The Hon'ble Supreme Court in ***Raj Kumar & Ajoy Kumar*** has set out the principles of calculating the disability of any person claiming the compensation. The principles are as follows:

- (i) *“All injuries(or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
- (ii) *The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability(except in the few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
- (iii) *The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of this permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*
- (iv) *The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”*

After perusing the principles, it appears to me that Hon'ble Supreme Court is of specific view that all injuries of permanent disability arising out of injuries do not result in loss of earning capacity.

It appears that the claim application was filed by the claimant stating his occupation to be a Plumber(Head Mistry) installation of big Tubewell. The photograph of claimant in the disability certificate shows that the hands of the claimant are well and active. It is the observation of the learned Tribunal that the "it appears that hands of the appellant have not suffered in any deformity.

Considering the view of the Hon'ble Supreme Court in **Raj Kumar & Ajoy Kumar** and also Considering the entire facts and circumstances of the case, it appears to me that the present appellant being the Plumber(Head Mistry) only using his hands to perform his duties. His occupation is not hampered due to loss of some fingers in the right leg. It appears that big finger of the right leg is intact.

The medical disability of the claimant may be 70% but in calculating functional disability of the claimant of this particular case(capable to perform his occupation by using hands), can be assessed as 40%.

Considering the entire circumstances, it appears to me that observation of the learned Tribunal in this case appears to be justified. I find no merit to entertain this

appeal. Accordingly, this appeal is merit less and dismissed.

Accordingly, FMA 255 of 2009 is disposed of.

All connection applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)