



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1491 OF 2010

Balasaheb Namdeo Palve

VERSUS

Suhas Gangadhar Katkare And Anr

...

Mr. D. R. Jayabhar, Advocate for Appellant

Mr. S. S. Jadhavar, Advocate for Respondent No. 1

Mr. A. B. Gatne, Advocate for Respondent No. 2

...

CORAM : R.M. JOSHI, J

DATE : JUNE 26, 2024

PER COURT :

1. This Appeal takes exception to the order dated 08.02.2010 passed in Misc. Workman Compensation Application No. 17/2009.

2. Parties are referred to as claimants, employer and insurer for the sake of brevity.

3. It is the case of the claimant that he was employed as a driver with the employer and was entrusted to drive the goods carrier tempo bearing registration no. MH-20-AT-2177. The said tempo met with an accident occurred with trailer bearing registration no. MH 06 6360. The said accident has occurred out of and during the course of the employment. Claimant's one

leg below knee was amputated. Hence, he claims that there is 100% permanent disability caused to him. Notice was issued to the employer seeking compensation towards the same. Since, the employer did not pay the amount of compensation, application was moved before the Commissioner under the Workmen's Compensation Act. After considering the pleadings and evidence on record, by passing impugned order claim was partly allowed.

4. It is the contention of the claimant that the said Authority has committed error in not considering disablement of the claimant to the extent of 100% but accepted the same for 50% only. It is further claimed that there was evidence placed on record indicating 100% disablement and hence, the entire claim ought to have been allowed.

5. Learned Counsel for the Claimant placed reliance on the judgment of the Hon'ble Supreme Court in case of K. Janardhan v. United India Insurance Co. Ltd and Anr, AIR 2008 SC 2384 wherein it is held that amputation of leg up to knee amounts to 100% disability and incapacity. He further argued that computation of compensation on the basis of loss of less than 100% is

not correct. He further argued that the learned Commissioner has committed error in computing compensation on the sum of Rs. 3586/- which ought to have been actual income earned by the claimant. To support the said submissions, reference is made to the judgment of Hon'ble Supreme Court in case of Chandramma vs. Manager, Regional Office, NCC Limited & Anr, Civil Appeal No. 9069/2022. It is further argued that since the employer has failed to deposit the amount of compensation, as mandated by Section 12 of the Workmen's Compensation Act, 1923 (for short 'the Act'), there is need to enhance the penalty imposed by the learned Commissioner against the employer.

6. Learned Counsel for the Insurer submits that no error can be said to have been committed by the Commissioner while determining the amount of compensation as the same is required to be computed in view of provisions of Section 4(1) (a) & (b) of the Act. It is further submitted that at the relevant time the amount of the wages could not have been considered more than Rs. 4,000/- per month for the purpose of computation of compensation. It is thus submitted that

in absence of any evidence lead by claimant in respect of his income, no fault can be found with the Commissioner taking into consideration notional income and computation of compensation thereon. It is further argued that the calculation of compensation done by the Commissioner is in accordance with the rules of the Act and as such, does not deserve interference. On the point of enhancement of penalty is concerned, it is argued that in no circumstance penalty can be imposed against Insurer.

7. Learned Counsel for the Employer opposed the Appeal. As far as the imposition of penalty is concerned, it is submitted that having regard to the facts and circumstances of the case, the discretion used by the learned Commissioner is justified.

8. Section 4(1)(a) & (b) is relevant for the purpose of determining the amount of compensation in the present case. For the sake of convenience, the same is reproduced thus:

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 workman multiplied by the relevant factor; or an amount of eighty 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 workman multiplied by the relevant factor; or an amount of Ninety thousand rupees, whichever is more;

9. As per the said provision, where there is permanent total disablement results from the injury, an amount of equal to 60% of the monthly wages of the injured workman multiplied by the relevant factor is the basis for the calculation of amount of compensation. At the relevant time, maximum amount of salary, as per the Explanation II, could have been Rs. 4,000/- per month only. In the instant case, though there is no dispute about the fact that claimant was a workman working as driver with employer and met with an accident which arose out of and during the course of employment. Though, claimant has raised claim of earning Rs. 4,500/- and more, however, admittedly there is no evidence led by the claimant to substantiate the

same. In absence of any such evidence being led by the claimant, learned Commissioner was perfectly justified in considering his income notionally. On the date of accident claimant was aged about 31 years and, therefore, the relevant factors applicable to the present case is 205.95. Thus, applying the said calculation, the claimant was entitled for compensation of Rs. 4,43,227/-.

10. Learned Commissioner, however, has reduced the said compensation by holding that the claimant is disabled to the extent of 50% and as such, loss earning capacity to that effect, compensation of Rs. 2,21,613.50/- was granted. Though, it appears that the said determination of disability is done in accordance with the Schedule of the Act which prescribes the percentage of disability for particular injury but Hon'ble Supreme Court in case of Chandramma (supra) has consistently held that in case of compensation under the Workman's Compensation Act if the person has lost earning capacity to the extent of 100%, he is entitled to the compensation on that basis. Admittedly, there was amputation of leg of the claimant

up to knee joint. Claimant was working as a driver and in such circumstances he should be said to have suffered 100% permanent disability and incapacity. Having regard to the law laid down by the Hon'ble Supreme Court, the order passed by the learned Commissioner deserves modification. Hence, it is held that the claimant is entitled for compensation of Rs. 4,43,227/-.

11. The learned Commissioner has granted the interest at the rate 12% p.a. from the date of order till realization of amount. In view of provisions of Section 4(a)(2) & (3) the Act, workman has right to receive compensation from the date of occurrence of accident. Thus, in view of Section 4(A)(3)(a) it is held that claimant would be entitled to receive interest at 12% p.a. from the date of accident and not from the date of order of Commissioner.

12. As far as direction to the employer to pay penalty of Rs. 50,000/- is concerned, Section 4(A)(3) (b) indicates that it is a discretion of the Commissioner to impose the amount of penalty up to Rs. 2,00,000/-. Determination of quantum of penalty would

depend on the facts and circumstance of each case. Having regard to the volume of business of employer, the imposition of penalty of Rs. 50,000/- does not deserve enhancement.

13. Admittedly, employer is insured with the insurance for the purpose of workman compensation and as such, both employer and insurer are jointly and severally liable to pay compensation amount along with interest. Employer and Insurer are held jointly and severally responsible to pay sum of Rs. 4,43,227/- along with interest at 12% p.a. from the date of accident till realisation. The employer to pay lump sum amount of Rs. 50,000/- by way of penalty to the claimant.

14. Appeal stands allowed in above terms.

(R. M. JOSHI, J.)

Malani