

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 151 of 1999 (O&M)
Date of decision : 20.09.2024**

United India Insurance Co. Ltd.Appellant

Versus

Sri Niwas and anotherRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. V. Ram Swaroop, Advocate
for the appellant/Insurance Company.

None for the respondents.

PANKAJ JAIN, J. (ORAL)

Present appeal is directed against order dated 30th of November, 1998 passed by Commissioner, Circle-II, Gurgaon under the Workmen's Compensation Act, 1923.

2. Claimant who was employed as driver by respondent No.1 suffered injuries after the vehicle met with an accident while coming from Surat (Gujrat) to Delhi. Claimant claimed that owing to the injuries suffered in the accident, he has been rendered permanently disabled and sought compensation.

3. Commissioner held that though the physical disability of the claimant has been assessed to be 37.5%, however, having been rendered

unable to drive, loss of income is 100% and accordingly awarded him compensation of Rs.2,27,472/-.

4. The only issue raised in the present appeal relates to the assessment of loss of income to the extent of 100%.

5. Counsel for the appellant has seriously disputed the same submitting that once physical disability of the claimant was assessed to be 37.5%, there was no reason for the Court to grant compensation to the claimant assessing loss of income as 100%.

6. I have heard counsel for the appellant and have carefully gone through the records of the case.

7. The issue w.r.t. loss of income owing to physical disability is no more *res integra*. The same was dealt by the 4 Judges Bench of Supreme Court in the case of **Pratap Narain Singh Deo vs. Srinivas Sabata (1976)**

1 SCC 289 holding as under :

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

" "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." ”

7. The aforesaid ratio has been further relied upon by the Supreme Court in the case of **Indra Bai vs. Oriental Insurance Company Ltd and another, (2023) 8 SCC 217**. Apex Court laid the test as under:

“28. In light of the aforesaid decisions and the definition of the term "total disablement" as provided by clause (l) of sub-section (1) of section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement. Thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement.”

8. Applying the aforesaid test to the workman involved in the said case, Apex Court held as under:

“31. In the instant case, on the basis of medical certificate provided by the Board, the Commissioner found the appellant unfit for labour inasmuch as there was complete loss of grip in appellant's left hand. Prior to the accident, the appellant worked as a loading/unloading labourer. Even if she could use her right hand, the crux is whether she could be considered suitable for performing her task as a loading/unloading labourer. Such a task is ordinarily performed by using both hands. There is no material on record from which it could be inferred that the appellant was skilled to perform any kind of job by use of one hand. It is also not a case where the appellant had the skill to perform her job by using machines which the appellant could operate by using one hand. In such circumstances, when the Board had certified that the appellant was rendered unfit for labour, there was no perversity in the decision of the Commissioner in awarding compensation by treating the disability as total on account of her functional disability. Consequently, no question of law, much less a substantial one, arose for consideration by the High Court so as to allow the appeal in exercise of power under Section 30 of the Act. In our considered view, the High Court erred in partly setting aside the order of the Commissioner and assessing the disability as 40% instead of 100%, as assessed by the Commissioner.”

9. In the instant case, it is not disputed that respondent No.1 was employed as a driver when he met with an accident. Accident has led to restriction of movement of his left knee and left ankle. Physical disability has been assessed to be 37.5%. In terms of the aforesaid disability, he has been rendered unfit to drive. He and will not be able to pursue his vocation.

10. Thus, in view of ratio of law laid down in **Pratap Narain Singh Deo's** case (supra) and the test as laid down by the Supreme Court in

the case of **Indra Bai vs. Oriental Insurance Company Ltd and another** (supra), no fault can be found with the findings recorded by the Commissioner in the impugned order whereby compensation has been awarded to the claimant assessing loss of income @ 100%.

11. In view of above, finding no merit in the present appeal, the same is ordered to be dismissed.

September 20, 2024

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(Pankaj Jain)

Judge