(2002) 12 KAR CK 0051

In the Karnataka High Court

Case No : M.F.A. No. 2147 of 1996

Babu Althaf APPELLANT

Vs

Farida Abba Khasim (Smt.) and Others RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) ACJ 1599 : (2003) 3 LLJ 158

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : K. Subba Rao, for the Appellant; G. Janardhana, for Repondent No. 1 and V.K. Bhat, for Kumar and Kumar, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned counsel who represent the contesting parties. The main submission canvassed by the appellant''s learned counsel is that the authority was wrong in having awarded only 60% of the aggregate compensation that had been computed in so far as the finding and evidence clearly indicates that the appellant was incapable of carrying on with the machine job after the amputation and further more that he was in fact discharged from service. Reliance is placed on two decisions, the first of them reported in Hutti Gold Mines Company Vs. Ratnam, wherein the Division Bench has very clearly applied the test as to whether the injured was capable of carrying on any other lesser form of employment and in the absence of evidence to establish this that he has lost his job as a result of the accident that he would still be entitled to 100% compensation and not the percentage amount. The same view has been expressed by the Bombay High Court in the decision reported in Ahmed Abdul Vs. H.K. Sehgal, .

2. On behalf of the respondent-Insurance Company learned counsel submits that the Court is required to take cognisance of the gravity of the injuries and quite apart from the fact that Schedule II of the Act in an injury of the present type at item 4 clearly indicates that the compensation should be limited to 60%, that the Court must also take judicial notice of the question as to whether the injury has

left the workman in such a condition that he is not in a position to carry out any work. Learned counsel submits that this is the very test which is contemplated in Schedule I Part 2 while prescribing that in the case of amputation of one hand that the compensation will be limited to 60%. His submission is that merely because the workman could not continue in that job in that factory would under no circumstances disqualify him from doing any lesser form of work wherein two hands are not required. Consequently, his submission is that no interference with the order is contemplated.

3. As regards the point of law involved, the case law is very clear to the effect that the percentage prescribed in Schedule II would normally apply but that the Court is within its discretion to vary this percentage. The spirit behind providing for compensation under the Workmen''s Compensation Act is in order to offset the loss that would be caused due to the injury that has occurred and that is why the Courts have gone into the question of whether after that accident the workman would be in a position to secure any other employment. One of the leading cases on the point Ball v. William Hunt & Sons Ltd. 1912 AC 496 was a case in which a workman had lost one eye which happened to be an eye in which he had no sight and consequently, the effective loss was zero but despite this he could not get employment anywhere because every employer insisted that it was a requirement that the workman must have two eyes and the Court granted the 100% compensation though technically, the workman had potential to do some other job. The Division Bench in the decision referred to by us has very aptly summarised the legal position by indicating that it is certainly open to the employer to demonstrate that the workman could get some other job possibly of a lesser nature and that he has in fact got it. Both the Courts in the string of decisions went into the aspect that employment for a handicapped person is almost impossible when there are enough of able bodied workers available. This is an angle of the law which the appellant''s learned advocate has highlighted and which fact justified. Under these circumstances, the order passed by the authority will have to be varied and the aggregate compensation will have to be stepped up to Rs. 1,08,455/- as against Rs. 65,073/- as awarded.

4. The appellant''s learned advocate did submit before us that the multiplier used is wrong and the computation is incorrect because the appellant''s salary was Rs. 1400/- per month and not Rs. 1000/- per month as the authority has taken it to be. Here again, respondent''s learned counsel points out, and perhaps rightly, that the section as it then stood prescribed a ceiling of Rs. 1000/- and that is the reason why the computation has been done on that basis. In our considered view, the computation is perfectly correct.

5. The appeal accordingly succeeds. The compensation for purposes of computation shall be Rs. 1,08,455/- and the interest awarded which was 6% per annum shall stand stepped up to 8% per annum on the enhanced amount. The respondent-Insurance Company is directed to deposit the balance/unpaid amount in question with the authority within a period of 12 weeks from today.

Out of the amount that is deposited the authority shall invest a sum of Rs. 25,000/- with the Post Office Savings Bank Account at the post office closest to where the appellant is residing. The amount is to be invested in the monthly Income Tax free scheme so that the monthly interest on the same goes to the SB A/c and can be withdrawn by the appellant. The amount is to be invested for a period of 10 years after which the amount along with the premium that the appellant is entitled be released to him. The appellant shall be asked to nominate a person of his choice when the account is opened. The balance of the amount to be released to the appellant.

6. The appeal accordingly succeeds and stands disposed off. No order as to costs.

