
(2016) 10 RAJ CK 0109
In the Rajasthan High Court
Case No : Civil Misc. Appeal No.4771 of 2012

Bhairu Ram @ Bheram

APPELLANT

Vs

Girdhari Yada

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2017) 152 FLR 411

Hon'ble Judges : Mr. Alok Sharma, J.

Bench : Single Bench

Advocate : Mr. Sanjay Rahar, Advocate, for the Appellant; Mrs. Bharti Trivedi, (Insurance Co), for the Respondent No. 2

Final Decision : Allowed

Judgement

Alok Sharma, J.—This is a claimant's appeal seeking enhancement of compensation awarded by the Commissioner under the Workmen Compensation Act, 1923 (hereinafter "the Act of 1923").

2. And under Challenge is the award dated 06.08.2012 passed by Commissioner, Workmen Compensation, Jaipur District-IIInd, Jaipur (hereinafter "the Commissioner") determining compensation under Section 3 of the Employees Compensation, Act 1923 (hereinafter "the Act of 1923") for a sum of Rs.3,55,807/- along with interest @12% p.a. w.e.f. 12.09.2009 till deposit of the said amount with the Commissioner for the permanent disability sustained by the appellant-claimant (hereinafter "the claimant") arising from his employment while working as Khalasi employed by the insurer on the insured Vehicle No. RJ-14-GA-5264.

3. The facts of the case are that claimant filed a petition under the Act of 1923 for compensation on account of injuries sustained by him in an accident on 12-8-2009 while working as a Khalasi under the employment of respondent No.1 on Truck No. RJ-14-GA-5264 which was insured with the respondent-Insurance

Company. The claimant sustained fracture in both legs and during treatment his left legs was amputated below the thigh. At the relevant time the claimant was 27 years of age and earning wages @ Rs.4,000/- per month. It was stated that following the amputation aforesaid the claimant was unable to work as a Khalasi and thus suffered 100% loss of earning capacity. A claim of Rs.5,08,296/- was made.

4. The respondent owner/employer(non-claimant) filed his reply, admitted facts of the claimant's employment on the insured vehicle, his age and monthly wage but pleaded that as at the relevant time the truck was insured, the respondent-Insurance Company was liable to pay the compensation.

5. The respondent-Insurance Company however contested the claim.

6. On the pleadings of the parties, the Commissioner framed 5 issues and recorded the evidence adduced by the contesting parties.

7. Thereon vide the impugned judgment dated 06.08.2012 with reference to the monthly wages and age of the claimant the Commissioner ascertained compensation of Rs.3,55,807/- plus interest payable to the claimant by assessing his loss of earning capacity as 70%.

8. The appellant is aggrieved of the quantum of compensation assessed asserting it to be perverse, in overlooking well settled principles for the purpose of determination of compensation. It was submitted that the Commissioner committed a perversity in holding that the appellant sustained 70% loss of earning capacity by mechanically conflating it with the permanent physical disability of 70% as certified, whereas the appellant sustained 100% loss of earning capacity in the facts of the case where with one amputated leg he could not work as a Khalasi and with that disability could not at all eke out a living on any other unskilled job which requires physical process. The appellant has no skill to be engaged even as a semi-skilled worker tasked on a sedentary job where the amputation of the left leg below the thigh would not be an obstruction to employment.

9. Counsel appearing for the respondent-Insurance Company has supported the award dated 06.08.2012 passed by the Commissioner.

10. The substantial question of law which arises in this appeal is as to "whether on account of the accident in which the claimant lost the left leg below the thigh to amputation, he, an unskilled workmen engaged as Khalasi on a Truck sustained loss of earning capacity up to the extent 70% or 100%."

11. Heard. Considered.

The fact of claimant being a Khalasi on the insured truck is not disputed. So is not the accident while working as such due to which his left leg below the thigh has been amputated. Nor is it disputed that consequently the claimant is now unable to perform the work/duty as Khalasi or any other unskilled job which

requires physical prowess. It is no body's care that the claimant has the requisite education or even skill to work on a semi-skilled job. The Hon"ble Supreme Court in the case of "Mohan Soni v. Ramavtar Tomar and Others. [2012(2) SCC 267], has laid down that what requires to be assessed for determining compensation is the effect of the permanent disability on the earning capacity of the injured. On that test, in my considered view the claimant in the facts of the case suffered 100% loss of earning capacity. This aspect of the matter was overlooked by the Commissioner. In the facts of the case the compensation amount requires enhancement as under:-

2400 (60% of Rs.4,000 per month wages) x 211.79 (relevant factor as per claimant's age of 27 at the time of accident)/100=Rs.5,08,296/-

12. The Commissioner has already awarded Rs.3,55,807/- as compensation. The remainder enhanced compensation works out to Rs.5,08,296--Rs.3,55,807/- =Rs.1,52,489/-(rounded off to Rs.1,52,500/-). The claimant is now entitled to an additional enhanced compensation of Rs.1,52,500/- along with interest at the rate of 12% per annum in terms of the award dated 06.08.2012 till the date of payment.

13. The appeal stands accordingly allowed.