
(2011) 06 KAR CK 0064

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1082 of 2009 (WC)

Bharath Sanchar Nigama Ltd.

APPELLANT

Vs

Sri. Patrick Gonsalves

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Citation : (2011) 06 KAR CK 0064

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Vishnu Bhat and Nanjesh Gowda, for the Appellant; Kamal and Bhanu, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—The Respondent, a phone mechanic, is working in the Telephone Exchange, Virajpet, under the administrative control of the Appellant. On 01.09.2005, the Respondent while attending the fault in the telephone line of a subscriber, due to electric shock, fell down from the roof slab and sustained injury. He was immediately shifted to a Government Hospital for treatment. Thereafter he has taken treatment at Unity Hospital, Mangalore. The Appellant has met the medical expenses. The Respondent was paid salary with allowances during the period of treatment.

2. The Respondent filed a claim petition before the Commissioner for Workmen's Compensation, Kodagu District, Madikeri, which was contested by the Appellant by filing statement of objections. The Medical Officer, who treated and examined the Respondent, came to the conclusion that, the Respondent has suffered 15% total body disability. However, while deposing on commission, the Medical Officer has maintained that the total body disability is 25%. The Respondent was drawing salary of Rs. 10,841/- p.m on the date of the accident. The Commissioner has made an award directing the Appellant to deposit compensation of Rs. 1,01,664/- within 30 days and in case of default, to pay interest at 12% p.a on the award amount. Aggrieved, the Appellant has filed this

appeal.

3. Sri Vishnu Bhat, learned Counsel appearing for the Appellant, contended that, the doctor after examination certified that the Respondent has 15% disability, which version he has changed while deposing on commission to 25%. Learned Counsel submits that, the Respondent continues to be in the employment of the Appellant as phone mechanic and there is no reduction in his salary & allowances and despite the accident, the Respondent does not face any loss of earnings and in the circumstances, the Commissioner is not justified in assessing the loss and directing deposit of compensation with interest.

4. Sri Kamal, learned Counsel appearing for the Respondent, on the other hand contended that, the medical evidence on record would establish that there is 25% partial permanent disability, which also amounts to functional disability and in the circumstances, the Commissioner is justified in making the impugned award and directing the deposit of the amount by the Appellant.

5. In view of the rival contentions and the record of the case, which I have perused, the point for consideration is:

Whether the Commissioner is justified in reckoning the partial permanent disability and the functional disability at 25% and in determining the compensation payable by the Appellant to the Respondent at Rs. 1,01,664/-?

6. The employment of the Respondent under the administrative control of the Appellant, the wages, age, as has found by the Commissioner in the impugned award are not under challenge. Even otherwise, the same are well established from the evidence on record. On account of the said accident, the Respondent sustained fracture of neck femur (R) and fracture of radial elbow (R) and was treated in the form of ORIF with cancellous screws. Ex.P-2 shows that fractures have united well and the hip shows restriction of last 15 degrees of rotation and the elbow shows restriction of last 15 of movements, which have been found to be of permanent nature and it was estimated by the qualified medical practitioner that the loss amounts to 15% of functional capacity required. During deposition on 06.09.2008, the doctor has deposed that the functional disability to be 25%.

7. While computing compensation for disabilities being suffered by a workman in the case of his employment, it is the functional disability resulting in less of earning capacity which is the criteria which is followed in assessing the compensation. The Act has the formula in computing compensation on account of injuries suffered during employment as is evident from Schedule-I to the Act. In Part-II of the said Schedule, the loss of earning capacity in terms of the percentage has been directly related to the loss of any of the limbs and parts thereof, both of the upper limbs as also the lower limbs. Loss of earning capacity is commensurate to the injuries suffered and the loss of earning capacity as a result thereof. Section 4 of the Act provides for the amount of compensation payable to a workman in different contingencies. The provision indicates that,

where a workman suffers injury which is not specified in Schedule-I to the Act, compensation is to be assessed on the percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, permanently caused by the injury as assessed by a qualified medical practitioner. Since the nature of injuries sustained by the Appellant is not specified in Schedule-I, the compensation has to be necessarily assessed on the basis of loss of earning capacity caused by the injury, which accounts to 15% as per Ex.P-2.

8. The Commissioner by overlooking Ex.P-2, also not taking into consideration the fact that the claimant continues to be in employment of the Appellant and continues to draw the same salary and allowances, has taken the functional disability at 25% and has made the award. Since the Learned Commissioner has misdirected himself and has ignored the material evidence - Ex.P-2, I am of the opinion that the percentage of functional disability has to be modified, since the Respondent has not been disabled from continuing with his employment under the Appellant nor is there any loss. The Respondent having sustained functional disability, the same is assessed at 15% in terms of Ex.P-2, having regard to the Respondent's recovery on account of medical treatment received, the expenses in that regard having been reimbursed by the Appellant. The compensation is being awarded keeping in view the future loss of earnings in the form of loss of promotion etc.

9. In the result, the appeal is allowed in part and the judgment under challenge and the consequential award is modified.

10. The compensation payable by the Appellant stands determined at Rs. 60,998% (Rs. 2400/- x 169.44 x 15%) with interest at 12% p.a after 30 days from the date of award as ordered by the Commissioner, since there is no cross-objection.

11. Out of the amount in deposit, the compensation to the said extent is payable to the Respondent and the balance amount to be refunded to the Appellant.

12. In the circumstances of the case, parties are directed to bear their respective costs.

Draw award accordingly.