

(1967) 07 CAL CK 0011
In the Calcutta High Court
Case No : A.F.O.O. No. 105 of 1967

Calcutta Electric Supply Corporation Ltd.	APPELLANT
Vs	
Habul Chandra Das	RESPONDENT

Date of Decision : 14-07-1967

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 4(1)

Citation : (1968) ACJ 270 : AIR 1968 Cal 278 : (1968) 1 CALLT 456 : (1969) 18 FLR 128 : (1968) 2 ILR (Cal) 485 : (1968) 2 LLJ 769

Hon'ble Judges : D.N. Sinha, C.J;A.K. Mukherjea, J

Bench : Division Bench

Advocate : Nalini Kanta Mukherjee, for the Appellant; D.M. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Sinha, C.J.—This is an appeal against an order of the Commissioner for Workmen's Compensation dated 21st of May 1966. The facts are briefly as follows: The workman. Habul Chandra Das was employed by the Calcutta Electric Supply Corporation Ltd. The workman complained that on the 12th day of February 1965, while in the course of his employment under the appellant, when he was carrying some molten compound in course of his duty, a portion of the compound fell upon his hand and seriously burnt his fingers and thumb. On the 26th of April 1965 he made a claim for compensation against the appellant. In the petition, after stating the particulars of the accident, the workman gave the following particulars of the injuries sustained by him:

"His left hand thumb has been Reformed and his right all the five fingers have become unworkable "

It is stated that the monthly wage of the workman amounted to Rs. 260 and that he was entitled to receive 40% for right hand finger and 30% for thumb of the left hand amounting to Rs. 7,840. The appellant filed an objection admitting the

injury to both hands but denying that the left hand thumb has been deformed or that the right hand five fingers have become unworkable. It Appears that at the trial two doctors gave evidence Dr. S. K. Neogy was examined on behalf of the workman. His evidence shows that he examined the workman on 12-5-66 although the accident occurred on 12-2-65. He admits that no X-ray plate was shown to him. He found rigidity of the inter phalangeal joints of the right index, middle ring and little fingers with second degree burn scar on their dorsum and dorsum of the right hand. Grip was restricted and painful According to him, 30 % should be assessed. On behalf of the appellant, Dr. Samarendra Sen was examined. Dr. Sen had examined the workman on 18-1-66 and 20-1-66. This doctor had the hand X-rayed and he gave his opinion after viewing the skiagram According to him, there was no evidence of burning injury excepting a depigmented scar over the fingers. The movements of the finger feint and hand were normal and the workman was not suffering from any disability. He said that the workman complained of difficulty i. e. stiffness of the joint and finger, but he could find no restriction in the movement and no basis for such allegations. The only other evidence called was R. C Gomes, a foreman under the appellant. He gave evidence that the workman worked under him while he was working as a foreman under the appellant. He said that after the accident, the workman resumed his old duty on 24-3-65. He had not lost any part of his efficiency, had made no complaint regarding difficulty in discharging his duties and there has been no reduction of wages. On the question of loss of earning capacity this is the only evidence adduced. The workman did not call himself or any other evidence for that purpose. The learned Judge recorded that the workman did not press any claim for compensation on account of the alleged deformity of the left hand thumb. In fact he went so far as to hold that the left hand thumb had nothing to do with the accident. He then proceeded to consider the incident by which the fingers in the right hand of the workman was burnt. The Commissioner proceeds to state as follows:

"As a result of this conflicting opinions of the two medical witnesses I have carefully seen the injured hand of the applicant in the light of the medical evidences on record. To me it appears that the applicant is suffering from some restriction of movements or rigidity. It may also be observed that the applicant is trying to exaggerate his version and thus malingering also to a certain extent. It is also not exactly correct that the applicant is not suffering any handicap whatsoever.

The Commissioner then considers the evidence of R C. Gomes and proceeds to say as follows :--

"Shri Gomes thinks that he is doing his old duties with the same old efficiency after the accident also and he has never complained of any disability But even if there is some restriction of movement he may not be very seriously handicapped in discharging his old duties. In view of the definition of the permanent partial disability given in the Act, I think he may nevertheless be considered to have

been suffering from some permanent partial disablement. In this view of the matter I find that the applicant is really suffering from some permanent partial disablement and his loss of earning capacity as a result of the said disablement should be assessed at 7 per cent only. The applicant is, therefore, entitled to a sum of Rs. 784/- as compensation less Rs 156/- already paid."

(2) The definition of "partial disablement" appears in Section 2(g) of the Workmen's Compensation Act, 1923. It runs as follows

" "Partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement and where the disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in (part II) of Schedule I shall be deemed to result in permanent partial disablement:"

It is difficult to understand what the Commissioner means by saying that according to this definition the workman was suffering from "some permanent partial disablement". The definition itself shows that "partial disablement" of a permanent nature must be such as reduces the earning capacity of the workman in every employment which he was capable of undertaking. It is not a scheduled injury and therefore, the reduction in earning capacity will have to be proved as a fact. We have repeatedly pointed out that the loss of earning capacity is not necessarily co-extensive with the loss of physical capacity. Firstly, let us look at the loss of physical capacity in this case. The Commissioner himself finds that the workman was exaggerating and malingering. In fact, in his claim he included the deformity of his left hand thumb, but it was found that it had nothing to do with the accident and the claim was abandoned at the trial. The doctor who says that there was stiffness of the joint had no X-ray skiagram before him while Dr. Sen caused a skiagram to be made and he found that everything was normal and there was no physical basis for the complaint made that there was stiffness in the joint. Undoubtedly when doctors disagree, the Judge has to exercise his own decision. In the present case, the Commr. did not even look into the skiagram and in view of the comments made by him with regard to the evidence of the workman, there does not seem to be any justification in coming to the conclusion about the permanent partial disability of the workman. He has misread the definition and his conclusions are hesitant and not based on any acceptable premises. But quite apart from that, even if we assume that there was physical disability or "permanent partial disablement" as the Commissioner calls it, still we have repeatedly pointed out that the Workmen's Compensation Act is not interested in mere physical disability. No compensation can be granted for any physical disability unless there was loss of earning capacity. It is only in the case of a scheduled injury that such loss is presumed. As I have pointed out above, the present case is not one of a scheduled injury. The "loss of earning capacity" cannot be proved by mere medical evidence. It must be proved by evidence

which will establish that the workman was, as a result of the injury unable to earn as much as he did before This is a question of fact and has to be proved by evidence like any other question of fact See Commissioners for Port of Calcutta Vs. Prayag Ram, . In this case, the only evidence regarding loss of earning capacity is against the workman. The workman called no evidence in that behalf and he did not come to the box himself. Consequently the onus being upon him, he has failed to establish the fact that there was any diminution in his earning capacity. That being so, his claim has necessarily to fail and should not have been allowed. The result is that the appeal succeeds and the order of the Commissioner is set aside and the claim dismissed. All moneys received for compensation must be returned. There will be no order as to costs.

A. K. Mukherjea, J.

3. I agree.