

(2010) 03 KAR CK 0030
In the Karnataka High Court
Case No : M.F.A. No. 4469 of 2003 (WC)

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Nagaraj and another	RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2011) ACJ 1564

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : M.S. Mandanna, for the Appellant; Suresh M. Lathur, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—The insurance company has preferred this appeal by challenging the order passed by the Workmen's Compensation Commissioner in the case W.C.A. No. 23 of 2000 dated 28.4.2003 on the question of quantum of compensation.

2. The facts of the case leading to the filing of this appeal are that on 14.3.2000 the Respondent-claimant who was driving the auto bearing No. KA-03 1622 during the course of his employment sustained injuries. There were two fractures to his left leg. Contending that he had lost his earning capacity, he filed the claim petition seeking compensation under the Workmen's Compensation Act.

3. After service of notice from the court of the Workmen's Compensation Commissioner, the Appellant herein appeared and contested the matter.

4. On the basis of the evidence on record, the Workmen's Compensation Commissioner held that there was 100 per cent loss of earning capacity and accordingly, awarded compensation of Rs. 2,56,284 with interest at the rate of 12 per cent per annum from the date of petition till realization. The said award is challenged in this appeal.

5. I have heard the Learned Counsel for the Appellant and Learned Counsel for the Respondents.

6. It is contended on behalf of the Appellant that in the instant case there were no doubt fractures to the left leg of the Respondent, but the doctor had opined that there was only 62 per cent disability to the limb and there was whole body disability of 33 to 34 per cent. But the Commissioner has assessed loss of earning capacity to an extent of 100 per cent which is contrary to the evidence on record and hence this is a fit case where the quantum of compensation has to be reduced.

7. Per contra, Learned Counsel for the Respondents has submitted that the evidence of the doctor would clearly show that the Respondent was walking with the help of crutches on account of multiple fractures sustained by him. The details of the disabilities have been given by the doctor and even according to the doctor, the disability to the limb is 67 per cent and, therefore, under the circumstances the Commissioner was justified in coming to the conclusion that the Respondent would not be in a position to earn his livelihood as a driver and, therefore, 100 per cent loss of earning capacity determined by the Commissioner is just and proper and the quantum of compensation awarded in the instant case does not call for any interference.

8. Having heard the Learned Counsel on both sides and on perusal of the material on record, the only point that would arise for my consideration is as to whether the quantum of compensation awarded in the instant case requires to be reduced.

9. From the material on record it is not in dispute that on 14.3.2000 the Respondent sustained injuries while driving the auto as a driver under the employment of the Respondent No. 2 herein. It is also not in dispute that there were two fractures to the left leg in respect of which the Respondent had undergone surgery and despite the surgery and treatment taken by him, he was walking with the help of crutches and that there was malunion of fractures and also there was restriction in the movement and shortening of the left leg. Under the circumstances, the doctor had opined that there was 67 per cent disability to the left limb though the whole body disability was to an extent of 34 per cent. But taking into consideration the nature of employment of the Respondent, i.e., as a driver of the auto and the fact that the Respondent was able to move about only with the help of crutches, the mere fact that the whole body disability is to an extent of 34 per cent would not be a relevant consideration while assessing the loss of earning capacity. If the nature of the employment and the restriction in the movement of the Respondent is taken into consideration, then the Commissioner is justified in assessing the loss of earning capacity at 100 per cent by relying upon a decision of the Supreme Court in *Pratap Narain Singh Deo v. Shrinivas Sabata* 1976 ACJ 141 (SC). In this context it would be of relevance to refer to another decision of the Apex Court in the case of *Dombayya Poojary* wherein it has been held that when there was 50 per cent permanent disability

on account of the injuries sustained to the leg, loss of earning capacity at 100 per cent was assessed considering the fact that the claimant was not in a position to walk without the help of crutches. The said decision is squarely applicable to the present case.

10. Further, the Division Bench of this Court in the case of New India Assurance Company Limited and Another Vs. Subhas, has held that even in the absence of the determination of loss of earning capacity by a qualified medical practitioner, considering the fact that there is loss of livelihood and the workman is incapable of doing his job, 100 per cent loss of earning capacity would have to be assessed even if the medical practitioner has assessed physical disability at 50 per cent. In the instant case the disability to the limb is at 67 per cent. It has come in the evidence that the Respondent is able to stand only with the help of crutches, the fact that he would be in a position to drive the auto cannot be accepted. Therefore, the determination of loss of earning capacity to 100 per cent in the instant case is just and proper. The compensation awarded does not call for any interference.

11. For the aforesaid reasons, the appeal is dismissed. It is stated that 50 per cent of the compensation has been withdrawn by the Respondent and the balance 50 per cent is in deposit before this Court. The Respondent is entitled to the said deposit. Out of the said deposit 50 per cent with proportionate interest along with interest at the rate of 12 per cent which has to be deposited by the Appellant, if not already deposited, shall be put in fixed deposit in any nationalized bank for an initial period of five years and the Respondent shall be entitled to draw periodical interest on the said deposit. The Respondent is directed to file a photocopy of the deposit certificate before this Court and seek approval of the same.