

(2002) 03 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : LPA (C) No. 47 of 2002

Ghulam Hassan

APPELLANT

Vs

Divisional Manager J and K State Forest Corporation

RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2003) 1 JKJ 698

Hon'ble Judges : H.K. Sema, C.J;S.K. Gupta, J

Bench : Division Bench

Advocate : M.P. Gupta and B.M. Bhardwaj, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Gupta, Judge

1. We have heard Mr. M.P Gupta learned counsel for the appellant and Mr. B.M Bhardwaj, learned counsel for the respondent as well in

extenso.

2. Assistant Labour Commissioner (with powers of Commissioner under Workmen's Compensation Act), Doda vide order dated 1-8-1995

awarded compensation to the tune of Rs. 13,000/- to the appellant for the injuries suffered by him during the course of his employment with the

respondents.

3. Aggrieved by the aforesaid order of the Assistant Labour Commissioner, Doda, CIMA NO. 121/1995 was preferred to impugne its

correctness. After going through the evidence on record, the learned Single Judge set aside the award by his order dated 22-8-2000, which

became the subject matter of this Letters Patent Appeal.

4. Facts relevant for the disposal of this appeal put tersely are that, on 2-10-1989, appellant, who was performing his duties for the benefit of the respondent in compartment 82 Gadi, District Doda, met with an accident and sustained injuries to his right leg, right hip, belly and right hand rendering him disabled permanently but partially. The sole ground urged by Mr. M.P Gupta, learned counsel appearing for the appellant, in his debate is that, an appeal against the award of the Commissioner is maintainable only when substantial question of law is involved. It was further contended that, whether or not any disability is caused in an accident during the course of employment and to what extent are all question of facts and no appeal lies u/s 30 of the Workmen's Compensation Act (hereinafter for short 'Act'). According to Mr. Gupta appellant's counsel, the finding recorded by the Commissioner that the disabled has suffered loss of earning capacity by 14% i.e over all he suffered 20% disability, being a pure question of fact, the appeal is not maintainable and placed reliance on the judgment of the Apex Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, .

5. Undoubtedly, Section 30 of the Act restricts the right of appeal to the substantial question of law. But where the Commissioner has clearly misdirected himself on a question of a law or a finding is recorded without any evidence whatsoever; or perverse finding is reached where no reasonable man may reach, it can be said that a question of law has arisen, which the Court may think to be a substantial one.

6. The phrase ""substantial question of Law"" must be given a wider construction. If the substantial question of law is a mixed question of law and facts, it will be deemed to be a substantial question and an appeal would be deemed u/s 30 as maintainable and consequently, it is open to the court to reconsider evidence for the determination of the question of law. The power of the High Court to interfere with the finding of fact where substantial question of law is involved includes a finding of fact based on no evidence. In the instant case, the appellant in support of his plea that he has suffered injury on his right leg, right hip, belly and right hand in an accident examined Dr. Rafizulah, Medical Superintendent District Hospital, Doda on 1-10-1992. On going through the statement of the doctor, it is found that he has assessed 20% disability due to Haematuria and

subjected to further proof. Dr. Rafizullah has not examined the appellant soon after the accident, but examined him after three year of the accident

in the open Court. He was neither certain nor definite whether the injuries certainly related to the accident in question. His opinion is based on his

examination of the appellant after three years of the accident. According to Dr. Rafizullah, the appellant has neither remained his patient nor has he

given him any treatment. He has also ruled out any sign of injury on the abdomen or right leg of the appellant. There is nothing on record to show

that where and what treatment had been taken by the workman after the accident. The statement of the doctor also does not reveal that the

workman has suffered any temporary or permanent incapacity, the precondition for grant of compensation under the Act. From the statement of

the doctor, it cannot be concluded that the alleged disability/ incapacity, if any suffered by the workman, related to the accident, in question nor is

so borne out from the oral testimony of the witnesses produced by the workman to support his claim for compensation. This being the case, the

appellant is not entitled to any compensation. In this view of the matter, we are in complete agreement with the finding of the learned Single Judge.

7. For the aforesaid reasons, the appeal is devoid of merit and hereby dismissed .