

(2004) 11 AP CK 0124
In the Andhra Pradesh High Court

Gona Sivasankar and Others

APPELLANT

Vs

K. Varaprasad and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 30, 4

Citation : (2007) 1 ACC 890

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Judgement

L. Narasimha Reddy, J.—In all these appeals filed u/s 30 of the Workmen's Compensation Act, 1923 (for short "the Act"), common questions arise, viz., whether in the absence of any certification by the medical practitioner, as to the loss of earning capacity of an injured workman, it is competent for the Commissioner under the Act, to determine the same and whether the difficulty or hardship arising out of an injury, can be said to have resulted in total loss of earning capacity.

2. C.M.A. Nos. 1396, 1615, 1642, 1643, 1984 and 2035 of 2002 are filed by workmen employed on motor vehicles; whereas C.M.A. Nos. 2141 and 7552 of 2002 are filed by the Insurance Companies, in relation to the claims covered by C.M.A. Nos. 1615 and 1984 of 2002. The appellants in the six appeals, referred to above, have been employed as drivers or cleaners, as the case may be, to work on the vehicles owned by various owners. All the vehicles are covered by the insurance. They sustained injuries, of varying degrees, mostly to their limbs, in the accidents that have taken place on various dates. They submitted claims before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Guntur-1 Circle (for short "the Commissioner"). The common feature in all these cases is that the injuries are not those specified in Schedule 1, to the Act and the medical practitioner, who examined them, has certified the percentage of disability of the limb and not the percentage of loss of earning capacity. Oral and documentary evidence was adduced before the

Commissioner by the respective parties. On appreciation of the same, the Commissioner himself determined the loss of percentage (of earning capacity) and awarded compensation. The percentage of loss of earning capacity determined by him was either the same, as the percentage of disability, or more.

3. Mr. Posani Venkateswarlu, learned Counsel for the appellants submits that in all these cases, respective medical practitioners have certified that the appellants cannot discharge the functions with the same efficiency or perfection. He submits that though the percentage of disability to the respective organs was relatively less, the impact of the same on the earning capacity is substantial and having regard to the definition of total disablement u/s 2(1)(1) of the Act, the loss of earning capacity of the appellants deserves to be taken at 100 per cent. He places reliance upon certain decisions rendered by this Court on the subject.

4. Mr. Kota Subba Rao and Mr. K. Ashok Rama Rao, learned Counsel appearing for Insurance Companies submit that in view of the judgment of this Court in *New India Assurance Co. Ltd. Vs. Sammayya M. Shankar (Workman) and Another*, it is competent for the Commissioner to make an assessment as to the loss of earning capacity where such an assessment is not made by the medical practitioner. They also contend that simply because the appellants sustained injuries of various degrees, it cannot be said that they became totally disabled from discharging their functions. They submit that in some cases, the Commissioner had arbitrarily fixed the percentage of loss of earning capacity, totally disregarding the percentage of disability.

5. The Act provides for the payment of compensation in the event of, or injuries to the workman while on duty. Schedule I of the Act enumerates different kinds of injuries under two categories, viz., those resulting in permanent total disablement and permanent partial disablement. The disability caused to a limb or organ of an employee does not render the employer to pay the maximum compensation/The liability has to be commensurate with the extent of loss of earning capacity arising out of such injuries. In respect of injuries enlisted in Schedule I, the corresponding percentage of loss of earning capacity is indicated. Where an employee suffers an injury other than the one specified in the Schedule I, the Commissioner is required to follow the procedure prescribed u/s 4(1)(c)(ii). This clause directs that the percentage of disability as well as percentage of loss of earning capacity shall be determined and certified by a medical practitioner. In *New India Assurance Co. Ltd. v. Sammayya (supra)*, it was held that if there does not exist any certification by the medical practitioner, as to the loss of earning capacity, it shall be competent for the Commissioner to determine the same. This exercise, however has to be undertaken duly taking into account the percentage of disability and the nature of functions to be discharged by the workman. There cannot be any arbitrary fixation of loss of earning capacity unrelated to the extent of injury and nature of functions.

6. In the cases on hand, the medical practitioners have certified the percentages of disability to the respective appellants, however, they did not certify the extent

of loss of earning capacity. Therefore, the Commissioner has taken upon himself the task of determining the same. In the process, he was mostly guided by his observation of the physical condition of appellants as well as the observation made by the medical practitioners as to the nature of difficulty for the appellants to discharge the functions. It is true that the percentage of loss of earning capacity fixed by the Commissioner was more than the percentage of disability. Neither law nor logic requires that the percentage of both the factors have to be the same. Depending on the nature of employment, an injury to a limb or organ may result in almost total loss of earning capacity, whereas in other cases, it may not have any impact at all. It is too difficult to decide these issues with mathematical precision. Unless it is urged before this Court that the exercise undertaken by the Commissioner was perverse or totally arbitrary, this Court cannot interfere with the same. Neither the appellants nor the respondents are able to convince this Court that the fixation of the loss of earning capacity by the Commissioner suffers from such irregularity.

7. It is too difficult to accept the contention that the difficulty in discharging the functions, arising out of an injury, would result in total loss of earning capacity. As observed in the preceding paras, much would depend on the type of injury and nature of functions to be discharged by the workman. The definition of total disablement u/s 2(1)(1) of the Act, indicates that a definite finding has to be recorded before declaring a person as having suffered total disablement. Neither any evidence in that direction was adduced by the parties, nor any finding was recorded to the effect that appellants have been totally disabled from discharging their functions. Therefore, this Court does not find any basis to interfere with the orders under appeal. Appeals are accordingly dismissed. There shall be no order as to costs.