

(1993) 02 MAD CK 0012
In the Madras High Court

Management of Tamil Nadu Cements Corpn. Ltd.	APPELLANT
Vs	
N. Jayapalan	RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4(1)(c)(ii)

Citation : (1994) 2 ACC 670

Hon'ble Judges : A. Thangamani, J

Bench : Single Bench

Judgement

A. Thangamani, J.—Respondent Jayapalan is a worker in the appellant Tamil Nadu Cements Corporation Ltd., Ariyalur, Trichy District. On

29.7.1988, at 3.45 p.m., when he was on his way to take his tool box in the factory, unexpectedly the stainless steel rod under drilling in the HMT

lathe got twisted and hit on him violently with great velocity as a result of which he had sustained injuries in his hip, left forearm and beneath right

eye on his cheek. He was immediately given first aid and later on treated at Raja Mirasudar Hospital, Thanjavur and A.K.C. Nursing Home.

Contending that the accident arose out of and in the course of employment, he claimed Rs. 19,940/- as damages from the Management in W.C.

No. 61 of 1990 on the file of the Commissioner for Workmen's Compensation. The appellant Cements Corporation Ltd., though conceded that

the worker was on duty in the factory at the relevant time, resisted the claim on the ground that the worker had no necessity to go near the lathe

without taking necessary precautions under safety rules and in contravention of the orders of the Management. The Commissioner holding that only

because the tool box was placed near the lathe, the respondent had to go there and sustained injuries, awarded Rs. 19,940/- as damages for the

20 per cent permanent disability suffered by the worker. Aggrieved by the said decision, the employer Cements Corporation Ltd. has come forward with this appeal.

2. Learned Counsel for the appellant did not dispute during arguments that the respondent sustained injury due to accident caused out of and in the course of his employment. However, he contended that the Commissioner for Workmen's Compensation went wrong in awarding damages on the ground that the respondent had suffered permanent disability of 20 per cent as disclosed by Exh. P-4 certificate issued by the doctor. We find from the records that one Dr. Section Joseph, M.S. (Ortho), has been examined on the side of the respondent. He has stated in his evidence that there was compound fracture in the left forearm of the worker. They were joined by metal sheets inside by a surgical operation. Though there is now fusion of the bones, the flexibility of the forearm has been reduced. This, reduction in flexibility may be a hindrance to this worker as a machine tool operator and the doctor is of opinion that the permanent disability suffered by the worker is 20 per cent. Exh. P-4 is the permanent disability certificate issued by this doctor on 6.8.1989. It reads that in the movement of the left forearm, the rotation is limited. This may be a partial disability for him as machine tool operator. The percentage of permanent disability is 20 per cent, learned Counsel for the appellant laid emphasis on the expression "may be a partial disability" occurring in Exh. P-4 and submitted that the doctor was not definite of the nature of disability suffered by the worker and so, the Commissioner was not justified in assessing the permanent disability of the respondent at 20 per cent. But it is seen that we have to read Exh. P-4 in the light of the evidence of the doctor. A combined reading of the two would indicate that the worker had definitely suffered permanent disability which was assessed at 20 per cent by the doctor.

3. Besides, learned Counsel for the respondent drew my attention to the fact that the injuries sustained by the worker herein are not covered by Schedule I of the Workmen's Compensation Act, 1923. u/s 4(1)(c)(ii) of the Act the amount of compensation shall be, in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of

earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. So the assessment of the doctor has been given a finality by virtue of Section 4 (1)(c)(ii) of the Act and that the medical evidence is conclusive on this aspect. However, I am unable to find any support in the language of the section for such a proposition. Instead I can only hold that the percentage of permanent disability as fixed by the doctor is a proper guide to assess the damages by the Court. And it is always open to the employer to establish in cross-examination of the doctor that the opinion rendered by him is unacceptable. But in this case, except for the suggestion that Exh. P-4 has been issued by the doctor without properly examining the injured, there is nothing in his cross-examination to discard his opinion that the percentage of permanent disability is 20 per cent.

4. Learned Counsel for the appellant next argued that the respondent was continuously employed and he was paid higher salary even after the accident and hence, he is not entitled for any damages on account of the permanent disability suffered by him. In *The Management of Sree Lalithambika Enterprises, Salem Vs. S. Kailasam*, a Division Bench of this Court has held that merely because the employer pays the same salary to the workmen, it cannot be stated that there is no loss of earning capacity. If the law were to be so, the employer can easily evade the provisions of the Act by continuing the employment on the same terms as were enjoyed by the workman prior to the accident. Nor again can it be said that if in future the workman is compelled to seek employment at reduced wages, he can claim compensation. That would result in the negation of the beneficial provisions of the Act. Further, if the Management winds up its business, the workman will be in the lurch because no person will give employment to a person who had suffered the injury. I, therefore, find no merit in this appeal.

5. In the result, the appeal is dismissed. No costs.