
(2004) 03 MAD CK 0013
In the Madras High Court
Case No : L.P.A. No's. 105 and 106 of 2001

N. Suriyamuthu

APPELLANT

Vs

Management of T.I. Diamond Chain Ltd. and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 3, 4, 4(1)

Citation : (2006) ACJ 1205

Hon'ble Judges : N. Kannadasan, J;K. Govindarajan, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for Row and Reddy, for the Appellant; Ravindran, for T.S. Gopalan and Co. and T.M. Venkatraman, for the Respondent

Judgement

K. Govindarajan, J.—The claimant before the Deputy Commissioner of Labour, Chennai filed the above appeals being not satisfied with the

amount awarded as compensation both by the Deputy Commissioner of Labour and the learned Judge.

2. The appellant met with an accident on 6.12.1989 and sustained injuries in the thumb. Similarly on 18.7.1990 he met with another accident and

due to the said accident he sustained injuries as a result of guillotine amputation of tip without loss of bone of middle finger. It is not in dispute that

these injuries are scheduled injuries and they have been categorised as partial permanent disability. The claimant claimed compensation on the basis

that he was receiving monthly wages of Rs. 2,115 and Rs. 2,158. The claimant calculated a sum of Rs. 38,854.56 and a sum of Rs. 3,018 paid by

the insurance company to the management for medical expenses and half pay when the applicant was under treatment. With respect to the latter

case, the claimant made a claim of Rs. 7,177.08 along with the amount paid by

the insurance company to the management for medical expenses

and half pay when the applicant was under treatment. The said claim was opposed by the management. Deputy Commissioner of Labour, in the

order dated 29.6.1992 awarded a sum of Rs. 16,944 and granting 30 days time to pay the amount failing which, the management was directed to

pay interest at 6 per cent. Not satisfied with the amount fixed by the Deputy Commissioner, the claimant preferred appeals in C.M.A. Nos. 1241

and 1242 of 1992. Learned Judge also confirmed the award passed by Labour Commissioner. Hence the above appeals.

3. Learned Counsel for the appellant submitted that u/s 4(1)(c) of the Workmen's Compensation Act, 1923, (hereinafter called "the Act"), where

permanent partial disablement results from the injury, the claimant is entitled to get compensation at the percentage fixed in the case of permanent

total disablement taking into consideration the full salary without considering ceiling limit mentioned in Explanation II to Section 4(1) of the Act.

According to him, the Explanation is only for the purpose of Section 4(1)(b) of the Act and so it cannot be relied on while calculating the quantum

in the case of permanent partial disablement.

4. By way of giving reply, the learned Counsel for the respondents submitted that while calculating compensation in the case of permanent partial

disablement, it has to be calculated adopting the entire method prescribed for the case of permanent total disablement including Explanation II.

Otherwise, the persons who suffered permanent partial disablement will get more money than that of total permanent disablement. According to

him, Section 4(1)(c) of the Act cannot be read as if the percentage mentioned in Section 4(1)(b) alone has to be taken into consideration for the

purpose of calculating compensation and not ceiling limit mentioned in the Explanation II.

5. On the basis of the above said pleadings and arguments, the following point for determination arises in these appeals:

Whether the ceiling limit mentioned under Explanation II to Section 4(1)(b) of the Act has to be taken into consideration while calculating

compensation in the case of Section 4(1)(c) of the Act?

6. The Workmen's Compensation Act, 1923, which is a Central Act (Act 8 of 1923) was enacted in order to give reliefs to the workman who

suffered injury during the course of employment and the legal heirs to claim appropriate compensation in case of death of workman in the course of employment. The Act came into force on 1.7.1924. The Act is based on social legislation. It embodies beneficial provisions which have to be in the normal course liberally construed. But while construing the provisions, the plain language cannot be overlooked. The Act seeks to compensate an employee for an injury arising out of the relationship of employer and employee and it does not seek to compensate the workman for the suffering that he undergoes on account of injury. It only provides for compensation for the loss of earning capacity.

7. Section 3 of the Act deals with employers liability for compensation. If any personal injury is caused to a workman by accident arising out of

and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the Act.

According to the proviso to Section 3 of the Act, the employer need not pay any compensation for the cases enumerated therein. Section 4 of the

Act deals with the quantum of compensation. The same has to be paid in accordance with the prescription or scale indicated in the Schedule of the

Act. Section 4(1)(a) of the Act deals with the quantum of compensation in the case where death results from the injury. Section 4(1)(b) of the Act

deals with cases where permanent total disablement results from the injury.

8. For better appreciation of the facts, we are extracting Section 4 of the Act as it stood during the relevant period, which reads as follows:

4. Amount of compensation.--(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a) where death results from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant

factor; or an amount of twenty thousand rupees, whichever is more;

(b) where permanent total disablement results from the injury an amount equal to fifty per cent of the monthly wages of the injured workman

multiplied by the relevant factor; or an amount of twenty-four thousand rupees whichever is more.

Explanation I: For the purposes of Clause (a) and Clause (b) "relevant factor" in relation to a workman means the factor specified in the second

column of Schedule IV against the entry in the first column of that Schedule

specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II: Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Clause (a) and

Clause (b) shall be deemed to be one thousand rupees only;

(c) Where permanent partial disablement results from the injury.

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of

permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

(ii) 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;

Explanation I: Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be

aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the

injuries.

Explanation II: In assessing the loss of earning capacity for the purposes of Sub-clause (ii), the qualified medical practitioner shall have due regard

to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I.

9. We are not concerned with the case where death results from injury. For fixation of compensation where permanent total disablement as

contemplated u/s 4(1)(b) of the Act occurs, fifty per cent (during the relevant period) of the monthly wages of the injured workman multiplied by

the relevant factor has to be taken into consideration for quantifying the compensation, if such amount comes below Rs. 60,000 (Sic. Rs. 24,000).

If it is above Rs. 60,000 (Sic. Rs. 24,000) the workman is entitled to Rs. 60,000 (Sic. Rs. 24,000) as contemplated u/s 4(1)(b) of the Act. For

the purpose of calculating compensation, under the first limb of Section 4(1)(b) of the Act, if monthly wages of an injured exceeds Rs. 1,000,

(during the relevant period), the monthly wage shall be deemed to be Rs. 1,000

only for the purpose of said calculation. So, from a reading of

Section 4(1)(b) of the Act, it is clear that the compensation payable by the employer shall not be more than Rs. 60,000 (Sic. Rs. 24,000).

10. Section 4(1)(c) of the Act, which provision is relevant to decide the issue in this case, deals with the amount of compensation payable to the

workman who suffered permanent partial disablement. In the present case, compensation is claimed u/s 4(1)(c)(i) of the Act, as admittedly the

injuries sustained by the appellant comes under Part II of Schedule I of the Act. The learned Counsel for the appellant submitted that on a plain

reading of the said provision, it is clear that the percentage of the compensation mentioned therein refers to the percentage of monthly wages

mentioned in Section 4(1)(b) of the Act, but while calculating the total amount on that basis, the employer cannot rely on Explanation II to restrict

the monthly wages to Rs. 1,000 irrespective of quantum of actual monthly wages as Explanation applies only to Section 4(1)(b) of the Act and

cannot be extended to Section 4(1)(c) of the Act.

11. To appreciate, we have to see the intention of the legislature and also go by the plain meaning of the said provision. The injuries mentioned in

Part II of Schedule I of the Act has been dealt with u/s 4(1)(c)(i) of the Act. Though the learned senior counsel appearing for appellant relied on

the phrase "such percentage" to say that such percentage is referring only to the percentage of monthly wages mentioned u/s 4(1)(b) of the Act, we

are not in a position to accept the same. The "percentage" mentioned therein is referable only to Part II of Schedule I of the Act under which the

percentage of loss of earning capacity has been mentioned. It is well settled that in order to ascertain the true intent and purpose of a statutory

provision, the court should not read the provision completely divorced or detached from the context in which the provision is set or lose sight of the

object or purpose of the enactment.

12. The word "such" is defined in Words and Phrases, Permanent Edition, (West Publishing Co., Volume 40-A) "'as of the sort or decree

previously indicated or con-textually implied'". Generally, the word "such" is an adjective meaning the one previously indicated, characterised or

specified or something which has been said before. "Such" is defined by Webster Dictionary as "'having the particular quality of character specified,

certain; representing the object as already particularised in terms which are not mentioned".

13. In the decision in Commissioner of Income Tax, Punjab, Himachal Pradesh and Bilaspur, Simla Vs. Shree Jagan Nath Maheshwary, Amritsar,

, while construing the meaning of "such", it is observed as follows:

In its grammatical usage and in its natural and ordinary sense, the word "such" is understood to refer to the last antecedent, unless the meaning of

the sentence would thereby be impaired, which does not seem to be the case here. The word "such" indicate something just before specified or

spoken of, that is proximately and not merely previously. It particularise the immediately preceding antecedent and not everything that has gone

before. It signifies what has preceded proximately and not just previously or formerly.

On the basis of the above interpretation of the word "such" occurred in the legislation, we are interpreting the provision to get a correct meaning,

on the basis of the intention of the legislature.

14. So, we have to read the said provision as follows:

such percentage as is specified therein in Part II of Schedule I of compensation which would have been payable in the case of permanent total

disablement, as being the percentage of loss of earning capacity caused by that injury.

In other words, with reference to the injuries specified in Part II of Schedule I, first the compensation has to be quantified as contemplated u/s 4(1)

(b) of the Act as if such injuries come under Part I of Schedule I and after fixing such compensation, the amount payable for permanent partial

disablement has to be arrived at, applying the percentage of loss of earning capacity mentioned in Part II of Schedule I of the Act. In short, before

quantifying the compensation adopting such percentage as contemplated in Part II of Schedule I of the Act with reference to permanent partial

disablement, the compensation has to be arrived at adopting Section 4(1)(b) of the Act and thereafter, as stated above, the amount payable u/s

4(1)(c) of the Act has to be arrived at by applying the percentage mentioned in Part II of Schedule I of the Act. This conclusion, we have arrived

at, taking into consideration the intention of the legislature. From the Schedule, we are able to see that the percentage of loss of earning capacity

which has to be taken into consideration for fixing compensation both in the case of permanent total disablement and permanent partial

disablement. As stated above, the compensation is being fixed only on the basis of loss of earning capacity. So, the workman who sustained

permanent partial disablement, can get compensation on the basis of percentage of loss of earning capacity as specified in Part II of Schedule I,

which can be arrived at on the basis of the quantum of compensation payable to the permanent total disablement adopting the method

contemplated u/s 4(1)(b) which includes Explanations also.

15. The above said view of ours is also supported by the definition u/s 2(1)(g) of the Act, which runs as follows:

2. Definitions.--(1) In this Act, unless there is anything repugnant in the subject or context--

(g) "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 is of a permanent

nature, such 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.

So, it is clear that the compensation amount has to be fixed only on the basis of loss of earning capacity. If we accept the submission of learned

Counsel for the appellant, then a workman who sustained permanent partial disablement, in a given case, may get more amount than the workman

who sustained permanent total disability. That is not the intention of the legislature. The intention of the legislature is that compensation has to be

fixed on the basis of loss of earning capacity of the workman.

16. In view of the above discussion, we do not find any reason to interfere with the judgment dated 7.2.2001 of the learned Judge. Accordingly,

the above appeals are dismissed. No costs.