

(2019) 10 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1720 Of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

Devilal & Anr.

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 23, 30

Citation : (2019) 10 RAJ CK 0074

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Sanjeev Johari, Rishabh Shrimali, RS Mankad

Final Decision : Dismissed

Judgement

1. This appeal under Section 30 of Workmen's Compensation Act, 1923 has been filed for the following reliefs :-

"It is, therefore, most humbly and respectfully prayed that this appeal may kindly be allowed, the impugned Award/Judgment dated 12.11.2007 passed by the learned Commissioner below be set aside and the claim petition be ordered to be dismissed as against the appellant with costs throughout, and in the alternative the awarded compensation may please be reduced substantially."

2. The only substantial question raised by counsel for the appellant-Insurance Company is that the disability certificate was only to the extent of 22%, whereas compensation has been determined taking the same as 100%. Counsel for the appellant submits that the disability is of shortening of leg, which can be cured by creating extra sole, thus, counsel for appellant submitted that it is not a permanent disability, therefore, compensation ought to have been determined in accordance with the disability certificate issued i.e. 22%.

3. Counsel for the respondent submits that this Court has already decided issue of treating disability percentage more than the one shown in Medical Certificate by the learned Authority in the case of The New India Assurance Co. Ltd. Vs.

Chand Mohd. & Anr. (S.B. Civil Misc. Appeal No.753/2006), relevant portion whereof reads as under:

"7. Heard learned counsel for the parties and the learned advocates assisting on the controversy in issue on the request of this Court and perused the precedent law cited at the Bar.

Section 4 of the WC Act exhaustively deals with the compensation on account of death in Sub-Section 1(a), compensation on account of permanent total disablement in Sub-Section 1(b) and compensation on account of permanent partial disablement in Sub-Section 1(c) and compensation on account of temporary disablement in Sub-Section 1(d). This Court takes note of the definition of partial disablement in Section 2(g) and total disablement in Section 2(l), which read as follows :-

(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;

(l) total? disablement? means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;"

This Court also takes note of the fact that where permanent partial disablement is resulting from the injury specified in Part-II of Schedule-I, the compensation has to be taken as payable in the case of permanent total disablement reflecting the percentage of loss of earning capacity. This includes Part-I and Part-II.

Further the injuries which are not mentioned in Schedule-I can of course be taken care of by assessing the loss of earning capacity as per the certificate issued by the qualified medical practitioner.

The WC Act lays down an elaborate procedure for both the parties to lead evidence and the procedure is prescribed under Section 23 of the Act including securing of attendance of witnesses, compelling for production of documents and material objects, as per the Code of Civil Procedure.

Thus, where an exhaustive outcome has been arrived for computation of compensation under the WC Act while adhering to the provisions of Section 4, no

further adjudication or application of mind is required by the Commissioner or Court but in a case where it has been pleaded by the claimant workman that his injuries are such extraordinary as it would render reduction in his earning capacity beyond the specified limits of Schedule-I and Section 4, then it shall be open for the claimant workman to adopt the procedure under Section 23 of the Act and drive home the point as to what was the extraordinary loss caused to him by the injury in question. This shall include the comparison of the injury with loss of earning capacity and the commensurating impact of the injury upon the nature of work being carried out by the claimant in question.

If the Commissioner after considering all evidence from both the sides has arrived at the factual matrix which clearly indicate that the injury in question is directly causing complete loss or a degree of loss in the current employment then the same has to be considered while granting compensation.

The best examples of co-relation between the employment and injury could be amputated leg and driver's job, amputated hand and tailor's and plumber's job etc.

The precedent law cited by the learned counsel for the respondents/claimants including Pratap Narain Singh (4 Judge Bench Judgment of Hon'ble Apex Court) (supra), K. Janardan (supra), Lal Singh Rajput (supra), Chandi Dan Charan (supra), Bajaj Allianz General Insurance Company (supra), Iffco Tokio General Insurance Co. (supra) and North East Karnataka Road Transport Corporation (supra) are directly holding the field and the only judgment which gave strength to the submissions of the learned counsel appearing on behalf of the insurance companies namely, Oriental Insurance Company Limited vs. Mohd. Nasir and another (supra) has been held to be per incuriam by the Hon'ble Supreme Court in North East Karnataka Road Transport Corporation (supra).

Thus, the substantial question is decided against the insurance company.

8. Now coming to the case at hand. The amputation of leg below knee of the claimant/respondent no.1 Chand Mohd. who was working as driver is undisputed. The learned authority below computed the loss of income while taking into consideration 100% disability. In light of what has been held above, the judgment and award passed by the learned authority below is well justified and does not call for any interference.

9. Resultantly, the present appeal, being devoid of any merit, is hereby dismissed.

10. All pending applications also stand disposed of."

4. Counsel for the respondent further submits that the awarded compensation has already been disbursed and after so many years any kind of recovery shall be too harsh, if at all made, due to interference by this Court. Counsel for the respondent further submits that assessment made is a question of fact and no substantial question of law is involved so as to warrant interference by this Court at such a belated stage.

5. This Court finds that the arguments advanced by counsel for the respondent to be genuine as precedent law of Chand Mohd. (supra) shall hold the field. The appeal, thus, is, dismissed. The stay petition is also dismissed.