
(2003) 03 KL CK 0136
In the High Court Of Kerala
Case No : M.F.A. No. 1298 of 2000

National Insurance Co. Ltd.	Vs	APPELLANT
Lison John and Another		RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4(1)

Citation : (2003) 03 KL CK 0136

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Thankappan, J

Bench : Division Bench

Advocate : E.M. Joseph, for the Appellant; P.V. Baby, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J

1. Substantial question of law raised in this appeal u/s 30 of the Workmen's Compensation Act, 1923, at the instance of the insurer, is whether the Commissioner can disregard the extent of loss of earning capacity assessed by a qualified medical practitioner, in excess of the extent of disability certified. It is submitted by the Appellant that the qualified medical practitioner, in Ext.A-1 disability certificate, had certified the extent of permanent partial disability at 35% and assessed consequent loss of earning capacity at 80 per cent. Both are evident from Ext.A-1. That has been duly proved by examining A.W.1 doctor who issued Ext. A-1. It is submitted that the extent of loss of earning capacity cannot be beyond the extent of disability certified.

2. We are unable to agree with this contention. The extent of loss of earning capacity may be on a higher side than the extent of disability depending upon the avocation of the workman concerned. This is a case of an injury not made mention of in Schedule I to the Workmen's Compensation Act, 1923. Necessarily, the yardstick for the purpose of computation of the compensation

shall be as contained in Section 4(1)(c)(ii) of the Workmen's Compensation Act. The said provision provides that the compensation shall be determined based on the loss of earning capacity as certified by the qualified medical practitioner. It is true that as held by a Full Bench of this Court in *New India Assurance Co. Ltd. v. Sreedharan* 1995 (1) KLT 275, the Commissioner cannot assess the extent of loss of earning capacity. But, this is a case where the qualified medical practitioner in Ext. A-1 had separately assessed the extent of disability and consequent loss of earning capacity, after examining the workman with reference to the injury sustained and in relation to the avocation that he had. When the qualified medical practitioner has assessed a particular extent of loss of earning capacity, the Commissioner cannot in the light of the provisions contained in Section 4(1)(c)(ii) find fault with such assessment. Therefore, no question of law is involved to invite interference. The Commissioner was perfectly justified in accepting the loss of earning capacity as certified by A.W. 1 in Ext. A-1 in the absence of the evidence that the medical practitioner has violated the yardstick mentioned in Explanation II. Of course, we have adverted to the decision in *United Insurance Company v. Mohanan* 2000 (3) KLT 473 cited by the counsel. As is discernible from paragraph 7 of the said Judgment, it was a case where that Division Bench had seen that the Commissioner erred himself in assessing the loss of earning capacity. That means the qualified medical practitioner had never assessed loss of earning capacity in that case. Therefore, it upheld the contention of the insurer based on the decision in *New India Assurance Co. Ltd. v. Sreedharan* 1995 (1) KLT 275. Before closing the Judgment of course some guidelines were issued for the Commissioner to deal with that case. But in this case the Commissioner has in accordance with the statutory mandate in Section 4(1)(c) it has taken note of the loss of earning capacity as assessed by the qualified medical practitioner.

The appeal, therefore, fails and it is dismissed.