
(1991) 09 AP CK 0023

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1153 of 1988

National Insurance Co. Ltd.

APPELLANT

Vs

Mohd. Saleem Khan and Another

RESPONDENT

Date of Decision : 09-09-1991

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 30

Citation : (1992) 2 ACC 748 : (1993) ACJ 181 : (1991) 3 ALT 504 : (1991) 2 APLJ 337 : (1992) 2 LLJ 377

Hon'ble Judges : V. Neeladri Rao, J

Bench : Single Bench

Judgement

1. R-2 in W.C. No. 49/87 on the file of the Commissioner for Workmen's Compensation, Rangareddy District Zone, is the appellant. This appeal was filed under Sec. 30, Workmen's Compensation Act (for short "the Act")

2. R-1 herein (applicant in W.C. 49/87) was employed as truck driver on Truck No. ABT 2337 by R. 2 herein. When the said truck was driven on May 10, 1986 by the first driver, it collided with the lorry coming in the opposite direction and then R-1 herein who was on duty as second driver in the above truck and who was sleeping at the time of the accident, received multiple compound injuries on both feet and collar bone. Dr. S. C. Reddy, Civil Surgeon, Orthopaedics, Osmania General Hospital Hyderabad, certified that in view of the injuries sustained by R-1 herein, permanent physical impairment and loss of physical function is 50%. He also stated that R-1 herein is not fit to drive any heavy vehicle.

3. The lower Tribunal awarded compensation on the basis that it is a case of permanent total disablement.

4. It was contended for the appellant that when Doctor found that the disability was only to an extent of 50%, the Lower Tribunal erred in awarding compensation as if it is a case of permanent total disablement instead of treating it as permanent partial disablement.

5. Sec. 2(1), Workmen's Compensation Act, 1923 defines the total disability, which is as under :-

"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"

By the date of the accident, R-1 herein was working as a driver of the truck, a heavy vehicle. It is in evidence that in view of the injuries R-1 herein is not fit to drive the heavy vehicle. Thus it is a case of disablement which incapacitated R-1 herein from driving the heavy vehicle i.e., the work which he was capable of performing at the time of the accident. Such disablement comes within the purview of total disablement as defined in Sec. 2(1), Workmen's Compensation Act, though the doctor held that physical impairment and loss of physical function was to the extent of 50% only. The work which the workman was capable of performing at the time of the accident is material to consider whether it is a case of total disablement or not, in view of the injuries sustained in the accident. If the workman is incapacitated to do all the work which he was capable of performing at the time of the accident, it is a case of total disablement. It may be that in view of the above injuries, the workman is capable enough to render some other sort of work but still when there is incapacity to do the work which he was capable of performing by the date of the accident, it is a case of total disablement. The Judgments in Pratap Narain Singh Deo v. Shrinivas Sabata (1976-I-LLJ-235) and Punambhai Khodabhai Parmar v. G. Kenel Constructions (1985-II-LLJ-98), support the above contention for R-1 herein. Hence I find that Lower Tribunal is right in awarding compensation by treating it as a case of total disablement when R-1 herein is incapable of performing the duty of driver of a heavy vehicle i.e., the work which he was performing by the time of the accident.

6. Accordingly this C.M.A. is dismissed. No costs.