

(2001) 04 KAR CK 0051

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2674 of 2000

National Insurance Company Limited

APPELLANT

Vs

Abdul Majeed and Another

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : (2001) 4 KCCR 2274

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : S. Srishila, for the Appellant; K. Rama Bhat and Associates for Respondent 2., for the Respondent

Judgement

R. Gururajan, J.—This appeal is directed against the order of the Commissioner of Workmen's Compensation and Labour Commissioner, Mangalore, dated 2.5.2000 passed in case No. WCA CR 41 of 1998. The first Respondent (workman) is engaged by the second Respondent- employer. Appellant is the insurance Company. I would be referring to them as per their status before the Commissioner.

2. Workman-Petitioner filed a petition u/s 10 of the Workmen's Compensation Act seeking for compensation before the Commissioner for Workmen's Compensation (for short the Commissioner) against the Respondent-employee. His case was that he was working as a driver with the employer. He was driving the lorry TATA 407 bearing No. KA-20/287 belonging to the employer. He was getting a sum of Rs. 3,000/- per month as salary. On 11.4.1998 at about 7.30 AM as per the instruction of his employer he was driving the said vehicle from Chickmagalore to Mangalore in the course of his employment. When the said lorry reached near Balehalli, Kaimara at Chickmagalur-Mudigere Road, the same met with an accident by dashing to a tree. Due to the said accident, the workman-Petitioner sustained grievous injury such as undisplaced fracture right mid third (right Humerus), fracture of the right tibia and cerebral ordema. He

was later treated in SCS Hospital, Bendoor, Mangalore. Scan was taken. He was an inpatient for 20 days and has spent Rs. 40,000/- towards medical expenses. He has sustained a permanent disability due to the accident. In these circumstances he has sought for compensation.

3. The employer did not file any statement. Insurance Company objected to the grant of compensation. The Commissioner framed six issues in para 11 of his order. Workman got examined himself as PW-1 and got marked six documents. The matter was heard, after hearing, the Commissioner has granted a compensation of Rs. 2,49,576/- in addition to interest at 12%. He has come to a conclusion that there is 100% loss of earning capacity. The challenge is essentially with regard to the quantum.

4. Learned Counsel for the Petitioner-insurance Company contended that grant of 100% loss of earning capacity is excessive and exorbitant. According to him, the medical evidence provides for 20% and the Commissioner has granted 100% without justification. He relies on various judgments of this Court in support of his case. Per contra, learned Counsel for the workman contends that the Commissioner on evidence has come to a conclusion that the Petitioner has suffered 100% loss of earning capacity. he states that being a driver, the said compensation is legal and proper. He also argues that there is no question of law in the case on hand.

5. I have heard the learned Counsel on either side. Admittedly in the case on hand, only the quantum is challenged. No arguments are advanced with regard to the accident arising out of and in the course of employment. Therefore, the finding that the workman is entitled for compensation is confirmed. Coming back to the quantum, it is seen from the petition that a total sum of Rs. 2,41,576/- is claimed as compensation. It is stated in the petition that the Petitioner was an inpatient for 20 days in SCS hospital; he was operated in the said hospital; he has spent more than Rs. 40,000/-; and he has permanent disability due to the accident. Evidence was recorded and in the evidence Petitioner has stated that he was taken to hospital for further treatment; he was in the hospital for 20 days and two operations were conducted. he was again admitted in another hospital and he was inpatient for three months. He has spent more than a lakh rupees. In support of this, he has filed several documents, particularly Ex.P-3 the wound certificate and Ex.P-6 the disability certificate. In cross examination he stated that his driving licence was renewed before the accident. The doctor, who was examined as PW-2 states that he has issued the disability certificate as per Ex.P-6. According to him the Petitioner is having a total permanent disability of 20%. In cross examination he has admitted that no operation was conducted as it was unnecessary at that time. He has reiterated that because of shortening in leg the total disability is 20%. In the light of these facts, the Commissioner while arriving at the quantum in para 23 of his order has ruled that the loss of earning capacity is 100%. This is questioned by the appellant rightly so. When the doctor's evidence is only 20% unless and otherwise there are other material

available on record, the Court cannot on its own assess the damages at 100% as has been done in the case on hand. The Commissioner while granting 100% holds that:

Keeping in view of the health condition and the opinion given by the doctor PW2 the Court has come to the conclusion that the Petitioner has lost 100% of his earning capacity.

6. What is the health condition which warrants 100% is not forthcoming either in the evidence or in the order. In the circumstances the learned Counsel for Insurance Company is right in his contention that the Commissioner has arbitrarily fixed at 100.

7. In this contention I may refer to the following judgments cited at the Bar.

a) In the case of Oriental Insurance Co. Ltd. Vs. Tajuddin Abdul Rahim Karanche, Kar 1671 this Court has ruled that not mere medical evidence but evidence of medical practitioner is necessary to have clear and reliable evidence to fix up the quantum of compensation. It is further ruled that the Commissioner is not precluded from making departure upon extremely cogent and genuine grounds and also seek better evidence if dissatisfied with the evidence of one medical expert.

b) In the case of Oriental Insurance Co. Ltd. Vs. Mohammed Haneef, it was ruled that the assessment made by a qualified medical officer is to be taken as only as a factor in fixing the quantum. Power to determine the extent of disability and to fix the quantum vests exclusively with the Commissioner. The Commissioner must disclose the process of reasoning adopted by him to arrive at the quantum.

c) In the case of Nisar Ahmed v. Babulal Achal Singh ILR 199 Kar 2804 this Court noticed the case of a driver who has suffered some injuries and was shown to be not capable of driving the vehicle. The Court ruled that the said disability cannot be considered as 100% loss of earning capacity.

d) Again in the case of Syed Abdul Samad And Another Vs. Jabbar Hussain, another learned Judge considered the loss of earning capacity in case of a lorry driver and ruled that the Commissioner is not justified in presuming the loss of earning capacity at 100%. In that case the Medical officer fixed the loss of earning capacity at 40% and the Court fixed the same at 70%.

8. In the light of these judgments it is clear to me that the fixation of compensation at 100% without any supporting material and without any proper reasoning/discussion by the Commissioner, requires my interference.

9. However, I must notice the contention of the workman that no question of law arises in the case on hand warranting my interference in terms of the power conferred on this Court u/s 30 of the Act. Counsel relies on Oriental Insurance Co. Ltd. Vs. Vasantha Pitambar and Another, . I have carefully gone through the said judgment and in the said case it is noticed by the Court the examination of

the doctor about the disabilities suffered by the appellant. The Court was of the view that the evidence of the doctor supports the case of the workman. It is in that context the Court ruled that the fixation of 70% by the tribunal cannot be gone into in an appeal. Therefore, the said contention based on this judgment is not acceptable to me. Moreover I must point out that if a Court gives a finding based on no evidence or if a Court gives a finding which no reasonable person would give on the material placed before that Court that finding is nothing but a perverse finding in the eye of the law. If any such finding is given without evidence it is a question of law and such perverse finding can certainly be gone into in an appeal u/s 30 of the Act.

10. This view of mine is supported by the judgment of the Supreme Court in the cases reported in *Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras*, , and *Gurbaksh Singh Vs. Nikka Singh*, and *Vinod Kumar Arora Vs. Surjit Kaur*, and lastly in *Depot Manager, A.P.S.R.T.C., Nirmal Vs. Abdul Sattar*, .

11. Before concluding let me quote what this Court has to say with regard to the arbitrary grant of compensation in the matter of accidents in the judgment reported in AIR 2000 Kar 324. A learned Single Judge of this Court has said:

Time is ripe for the Courts to take judicial notice of an unhealthy trend that is growing in the motor accidents claim jurisdiction. It is hightime that the Tribunal takes note of the fact there are being made exaggerated claim for compensation with respect to for minor injuries sustained, by an accident victim describing and camouflaging it to be very serious in nature and describing the claim as made for just compensation. It has come to the notice of this Court that there are several tribunals also which falls a victim to such an exaggerated claim with unreliable evidence either accidentally or deliberately. It is only reasonable that Courts exercise its judicial power very judiciously in these matters so that only just claims are met and awarded just compensation as an undeserving award will have also to be satisfied by the insurance companies utilising public money. Consequence thereof would be that the genuine person who has suffered injury would lose the claim for "just" compensation itself. The Appeal is dismissed of with the above observations.

12. This Court had occasion to notice that deserving cases are not granted compensation and in certain undeserving cases arbitrary compensation is granted by the Commissioner. Workmen Compensation Act is a Welfare Legislation. The benefits provided under the Act is analogous to the benefits provided under ESI/MV Act. Workmen Compensation Act, ESI Act and the MV Act are the beneficial piece of legislation provided for grant of compensation in the event of the an accident claim in favour of the workmen. The adjudicative machineries both under ESI Act and the MV Act is headed by a judicial member and a judicial mind. It is not so in the case of Workmen Compensation Act. In these days of sophisticated industrialisation it is advisable to get these matters also adjudicated at the hands of a trained judicial mind. It would be in the interest of all concerned to have such adjudications. Moreover under the

provisions of Workmen's Compensation Act, Commissioner under the Act is a final fact finding authority and an appeal lies only on question of law u/s 30 of the Act. In these circumstances, it is all the more necessary that these issues are adjudicated or tried by a authority having a judicial background to avoid unnecessary arguments with regard to entitlement of the quantum under the Act. This Court hence, suggests that this adjudication now being done by the Labour Department can as well be got done by a judicial mind by way of appropriate notification granting adjudicatory powers in view of such powers under the Act. It would be more appropriate that the said powers are granted in favour of EI Court or Claims Tribunal if permissible in law. In the alternative a separate Court as in the case of Sales Tax Recovery be constituted in the larger interest of better adjudication, quick disposal and to achieve the object of the Act.

13. In the circumstances the amount of 100% without evidence is set aside. In the normal circumstances, I would have myself fixed percentage in the light of the judgments. But according to me ends of justice require a further opportunity to the parties to place any additional material if it is so desired with regard to quantum of compensation.

14. In the result this appeal is accepted. The order of the Commissioner is set aside. Matter is remitted back in so far as quantum of compensation is concerned to the Commissioner. Parties are at liberty to file any additional documents or any additional evidence only on this issue. Parties are to appear on 2.5.2001 without waiting for any notice. Commissioner is directed to complete the proceedings before 30.8.2001. The amount already deposited before this Court is directed to be kept with the Commissioner and the Commissioner is directed not to disburse the same till the final disposal of this case. Deposit already made is subject to adjustment in terms of final orders to be passed by the Authorities.

15. Office is directed to send the copy of this order to Chief Secretary, Law Secretary and Labour Secretary for information and needful action in the matter. Office is also directed to return the records immediately.