

(2015) 04 MAD CK 0295

In the Madras High Court

Case No : CMA (MD) No. 1395 of 2006 and M.P (MD) No. 1 of 2006

National Insurance Company Ltd.

APPELLANT

Vs

P. Suresh and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(g), 2(l)

Citation : (2015) 04 MAD CK 0295

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : A.K. Baskara Pandian, for the Appellant; K. Govindarajan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

D. Hari Paranthaman, J—The 1st respondent was a driver in a Lorry bearing registration No. KA.01-AB-7989 owned by the 2nd respondent. On 01.01.2006, he met with an accident and received injuries in his left leg which resulted in amputation of his left leg, below knee. He filed W.C. No. 48 of 2006 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Dindigul, claiming compensation of Rs. 7,00,000/-.

2. The 1st respondent/claimant was examined as a witness and he examined the doctor to prove the disability. Exs.P1 to P10 were marked on his side. The 2nd respondent/employer was examined as a witness. No oral and documentary evidence was let in on the side of the appellant.

3. The Deputy Commissioner of Labour passed an order dated 12.07.2006 holding that the 1st respondent/claimant sustained injuries during the course of employment under the 2nd respondent and awarded compensation of Rs. 5,27,422/-. This appeal is against the aforesaid order, raising the following substantial questions of law:-

"1) Whether the Commissioner can fix the loss of earning capacity by relying

upon the evidence of the expert which is contrary to the W.C. Act?

2) Whether the Commissioner can fix the loss of earning capacity at 100% when the schedule I part II serial 20 of the W.C. Act contemplates only 50%?"

4. Now, the only question raised by the learned counsel for the appellant is that when Serial No. 20 in Part-II of Schedule-I of the Workmen Compensation Act provides only 50% as the loss of earning capacity for the injuries sustained by the claimant, the Deputy Commissioner of Labour is not correct in fixing the disability at 100%.

5. On the other hand, the learned counsel for the 1st respondent/claimant has taken me through the evidence of the doctor and also the provisions of the Workmen Compensation Act, more particularly, the definition of the word "total disablement" as defined under Section 2(l) of the Act.

6. I have considered the submissions made by either side.

7. As per Section 2(g) of the Act, if a workman received injury specified in Part-II of Schedule-I, then he is deemed to have suffered permanent partial disablement. Part-II of Schedule-I contains 48 items of injuries and the percentage of loss of earning capacity is noted against each item. In the case of those injuries, no examination of Doctor is required. For instance, the first item is "Amputation through shoulder joint" and the percentage of loss of earning capacity for the said injury is 90%. If a workman suffered amputation through shoulder joint, the percentage of loss of earning capacity should be taken as 90% and no Doctor need be examined. Likewise, item 27 is relating to loss of whole fingers of right or left hand. If a workman suffered loss of whole fingers of right or left hand, the percentage of loss of earning capacity should be fixed at 14%. So also, for the loss of two phalanges, the loss of earning capacity should be fixed at 11% as per item 28 of Part II to Schedule I of the Workmen's Compensation Act.

8. It is necessary to extract Section 2(l) of the Workmen Compensation Act:-

"(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 1 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;"

9. It is also necessary to extract Section 2(g) of the Workmen Compensation Act:-

"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 2[in Part II of Schedule I] shall be deemed to result in permanent partial disablement."

10. The definition of the word "total disablement" under Section 2(l) of the Workmen Compensation Act, makes it clear that if a person is not able to do the work which he was doing earlier, then it should be taken as total disablement. It is not the case of the appellant that the 1st respondent/claimant could do the work of driver, but they still rely on the disability certificate issued by the doctor and contend that the Deputy Commissioner of Labour could not fix more than the percentage of disability certified by the doctor. In this regard, the relevant paras from the order of the Deputy Commissioner of Labour are extracted hereunder:-

Regarding disability the doctor is competent to speak about the physical disablement suffered by the injured which is reasonably within the sense of his expertise. Regarding the loss of earning capacity which cannot be equated with physical disablement in all the cases, he cannot be said to be an expert in the matter. His evidence though admissible is to be considered together with other evidence available in the case. The commissioner in whom the power of adjudication is vested under the statute may or may not accept the doctor's statement relating to the loss of earning capacity of the injured in judging the entire matter. In this case the doctor while making a statement regarding the extent of physical disablement suffered by the injured he has also specifically stated about the loss of earning capacity. Even though the commissioner for workman compensation may or may not accept the doctor's statement relating to loss of earning capacity, from the evidence of doctor, the facts that appear from the medical evidence may provide basic materials for assessing the loss of earning capacity of a workman. Loss of earning capacity and percentage of disability are conceptually and intrinsically different, however the latter generally provides materials for determination of the former.

The Supreme Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 held, that compensation is to be awarded not with reference to the loss of physical capacity but with reference to the loss of earning capacity which is to be examined with reference to the nature of job the workman was doing.

Considering the nature of injuries as is evident from the document on record, I accept the evidence of AW2 in toto and hold that the applicant has suffered 100% of loss of earning capacity due to the accident."

11. Therefore, I am of the view that the Deputy Commissioner of Labour cannot be faulted for fixing the disability at 100%.

12. Here, the only issue is as to whether the workman established that he could

not do the work which he performed prior to the accident. In this case, if he is able to establish, he could claim compensation for the permanent total disablement particularly, since he could not do the work even after the treatment was over. In this case, there is abundant evidence that the claimant could not do the work of driver and even he could not stand without the help of others. Almost, he becomes a vegetable.

13. Hence, I do not find any infirmity on the part of the Deputy Commissioner of Labour in fixing the permanent disability sustained by the claimant at 100%. Accordingly, the substantial question of law is answered against the appellant.

14. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. The claimant is permitted to withdraw the amount deposited. Consequently, M.P(MD) No. 1 of 2006 is closed.