
(2007) 03 AP CK 0019
In the Andhra Pradesh High Court
Case No : C.M.A. No. 926 of 2006

New India Assurance Company Ltd.

APPELLANT

Vs

Abdul Khader Jilani @ Jilani and Another

RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 337

Workmens Compensation Act, 1923 — Section 2, 2(1), 22, 30, 4

Citation : (2008) ACJ 1870 : (2007) 4 ALT 607

Hon'ble Judges : G.S. Singhvi, C.J.;C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : Naresh Byrapaneni, for the Appellant; None, for the Respondent

Judgement

G.S. Singhvi, C.J.—Whether the entries contained in Parts I and II of Schedule I of the Workmen's Compensation Act, 1923 (for short, "the Act") are relevant for assessing the loss of earning capacity for non-schedule injuries, particularly in the context of requirement under Explanation-II to Section 4(1)(c)(ii) is the question, which arises for determination in this appeal filed by the New India Assurance Company Limited against award dated 4-4-2006 passed by Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad (hereinafter described as "the Commissioner") in W.C.No. 15 of 2004.

2. Respondent No. 1 Abdul Khader Jilani was employed by respondent No. 2 Smt. Mulam Bee for driving auto-rickshaw bearing No. AP-11 V-9066, which was owned by her. On 7-2-2004, a Maruthi car bearing No. AP-10D-8730 dashed against the auto-rickshaw at Sangeet X Roads, Secunderabad. As a result of the accident, respondent No. 1 suffered injuries. The police registered Crime No. 34 of 2004 u/s 337 IPC against the driver of the car. The same is pending trial before the competent Court.

3. Respondent No. 1 filed an application u/s 22 of the Act for award of compensation to the tune of Rs. 5 lakhs. Respondent No. 2 did not contest the

application. The appellant-New India Assurance Company Limited filed reply and denied its liability by asserting that respondent No. 2 did not give any information about the accident and also that respondent No. 1 did not have a valid licence to drive the vehicle.

4. On the pleadings of the parties, the Commissioner framed the following points for consideration:

1. Whether the applicant Abdul Khader Jilani @ Jilani met with an accident on 7-2-2004 and sustained injuries in the accident, which arose out of and in the course of his employment as driver on auto bearing No. AP 11 V 9066 under O.P. 1?

2. If yes, what is the percentage of disability and consequent loss of earning capacity of the applicant? And;

3. What is the amount of compensation entitled by the applicant?

5. In support of his claim, respondent No. 1 examined himself as A.W. 1 and Dr. S. Vasudeva Rao, Civil Surgeon (Specialist Orthopaedician) as A.W. 2. The appellant examined A. Ramakrishna, Administrative Officer as R.W.

6. After considering the evidence of the parties, the Commissioner held that the applicant had suffered injuries in the accident, which took place on 7-2-2004. He further held that even though the applicant suffered only 45% physical disability, the loss of earning capacity was to the tune of 100%. Accordingly, he awarded compensation of Rs. 3,46,904/- to the applicant (respondent No. 1 herein).

7. The appellant challenged the award of the Commissioner by filing an appeal u/s 30 of the Act. The learned Single Judge noticed the judgments of the Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata 1976 ACJ 141 (SC), of this Court in National Insurance Company Ltd. Vs. Rajesh Helmandge and Another, . Pasupuleti Ramarao Vs. Pothinaboina Durgarao and another, . Charan Singh Vs. G. Vittal Reddy and Another, ., New India Assurance Co. Ltd. Vs. Sammayya M. Shankar (Workman) and Another, ., Gona Sivasankar Vs. K. Varaprasad and Another, ,National Insurance Co. Limited v. D. Sivasankar 2006 (4) ALT 526 : 2006 (4) ALD 526., as also the judgment of Gujarat High Court in Punambhai Khodabhai Parmar v. G. Kenel Construction 1984 ACJ 739 (Gujarat) and of Calcutta High Court in National Insurance Co. Ltd. Vs. Susanta Das and Another, and observed that in view of apparently conflicting views expressed by different High Courts, the matter deserves to be considered by the Division Bench for an authoritative pronouncement. Accordingly, he referred the matter to the Division Bench.

8. Shri Naresh Birapaneni, learned Counsel for the appellant relied on the judgment of this Court in National Insurance Co. Limited v. D. Sivasankar 2006 (4) ALT 526 : 2006 (4) ALD 526 and the Full Bench Judgment of Karnataka High Court in Shivalinga Shivanagowda Patil and Others Vs. Erappa Basappa Bhavihala and Others, t and argued that in the case of an unspecified injury, the

Commissioner cannot award compensation over and above what has been specified in Part-II of Schedule-I of the Act. He further argued that even if, as a result of unspecified injury suffered by him, the workman is incapacitated to do the work for which he was employed at the time of accident, the amount of compensation payable to him cannot exceed the compensation prescribed for specified injuries. He submitted that the contrary view expressed by the learned Single Judges in National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another, , Rayapati Venkateswara Rao Vs. Mantai Sambasiva Rao and Another, does not lay down correct law.

9. We have given serious thought to the arguments of Shri Naresh Byrapaneni. The Act is a piece of legislation enacted for payment of compensation by the employers to their workmen for the injury caused by accident out of and in the course of employment. The definitions of the terms "partial disablement" and "total disablement", which have bearing on the decision of the question referred by the learned Single Judge read as under:

2(1)(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workmen 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;

2(1)(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.

10. Section 4, as it stood before its substitution by the Workmen's Compensation (Amendment) Act, 1984, reads as under:

4. Amount of compensation:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a) Where death results from the injury and the deceased workman has been in respect of monthly wages falling within limits shown in the first column of Schedule IV-the amount shown against such limits in the second column thereof;

(b) Where permanent total disablement results from the injury and the injured

workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV-the amount shown against such limits in the third column thereof;

(c) Where permanent partial disablement results from the injury-

(i) In the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) In the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury;

...

The amended Section 4 reads as under:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:

(a) where death results An amount equal to (fifty per cent) of the monthly from the injury. wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees, whichever is more;

(b) where permanent total An amount equal to sixty per cent of the monthly disablement results wages of the injured workman multiplied by the from the injury. relevant factor;

or

an amount of ninety thousand rupees, whichever is more; Explanation I: For the purposes of Clause (a) and Clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II: Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be four thousand rupees only;

(c) where permanent (i) in the case of an injury specified in Part II partial disablement of Schedule I, such percentage of the compensation results from the which would have been payable in the case of injury. permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is

proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

11. An analysis of the definitions of "partial disablement" and "total disablement" shows that reduction in the earning capacity of the workman in an employment in which he was engaged at the time of accident or in every employment which he was capable of undertaking at the time of accident is determinative of partial or total disablement. Proviso to Section 2(i)(1) contains a fiction. It lays down that permanent total disablement is to be presumed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where aggregate percentage of the loss of earning capacity specified in Part II against those injuries is 100%. In other words, the incapacity of the workman to do the particular work or every work has to be judged with reference to the work with which he was engaged or he was capable of doing at the time of accident.

12. Section 4 specifies the amount of compensation payable in case of death/permanent total disablement or permanent partial disablement resulting from the injury. In case of permanent partial disablement in the context of an injury specified in Part II of Schedule I, the amount of compensation payable to the workman is at par with the one which would have been payable in the case of permanent total disablement. If the injury is not specified, then the proportionate compensation is payable keeping in view the loss of earning capacity to be assessed by the qualified medical practitioner. There is nothing in the plain language of Section 4(1)(c)(ii) from which it can be inferred that in the case of an injury not specified in Schedule I, the compensation is to be paid keeping in view the entries contained in Parts I and II of Schedule I. The very fact that the Legislature has designedly omitted reference to any part of Schedule I in Section 4(1)(c)(ii) indicates that the entries contained in those parts do not control the exercise of discretion of the competent authority in the matter of award of compensation, which, as mentioned above, is required to be determined keeping in view the loss of earning capacity as assessed by the qualified medical practitioner. If the Legislature wanted that in the case of an unspecified injury, the amount of compensation should be awarded with reference to the entries contained in Parts I and II of Schedule I, then the provision of Section 4(1)(c)(ii) would have been differently worded.

13. In *Pratap Narain Singh Deo v. Shrinivas Sabata* (1 supra), the Supreme Court interpreted Section 2(1) of the Act and approved the following finding recorded by the Commissioner:

The injured workman in this case is carpenter by profession.... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only.

14. In that case, a carpenter while doing work in the course of employment fell down and sustained injuries as a result of which his left arm above the elbow

was amputated and he became unfit to do carpentry work. The Supreme Court held that the disablement is total and not partial as the work of carpentry cannot be done by one hand only.

15. In *National Insurance Co. v. Mohd. Saleem Khan* (11 supra), a learned Single Judge of this Court relied on the observations made in *Pratap Narain Singh Deo v. Shrinivas Sabata* (1 supra) and held as under:

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 Sections 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.

(emphasis added)

16. In *Pasupuleti Ramarao v. Pothinaboina Durgarao* (3 supra), another learned Single Judge considered the question whether the Commissioner was justified in equating the percentage of permanent disability of 60% with the loss of earning capacity at 60%. He relied on the judgment of *Mohd. Saleem Khan*'s case (11 supra) and held that as the appellant became disabled to perform the job of cleaner, he will be deemed to have suffered 100% loss of earning capacity and is accordingly entitled to compensation.

17. In *Janatha Modern Rice Mills Vs. G. Sathyanarayana*, , the learned Single Judge interpreted Section 2(1)(g) and (I) and held:

The proviso to the definition of "partial disablement" in Section 2(g) states that "every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement". In view of the said deeming provision, it is not possible to contend that such an injury could never amount to "total disablement" even if it incapacitates the particular workman suffering that injury for all work which he was capable of performing at the time of the accident. The proviso to the definition of "total disablement" indicates that if the combination of injuries specified in Part II of Schedule I result in the aggregate percentage of loss of earning capacity crossing 100% permanent total disablement shall be deemed to result.

18. In *Rayapati Venkateswar Rao v. Mantai Sambasiva Rao* (12 supra), the learned Single Judge referred to various judgments and held that the cleaner of lorry who sustained compound fracture of his right leg and, on that account, was

incapacitated to discharge his duty as cleaner, will be deemed to have suffered 100% loss of earning capacity and is accordingly entitled to compensation.

19. In *National Insurance Co. Ltd. v. Rajesh Heimandge* (2 supra), the learned Single Judge interpreted Section 4(1)(c)(ii) of the Act and observed:

Section 4(1)(c)(ii) and the explanation to the said provision clearly indicates that the evidence of qualified medical practitioner shall be relevant and the Commissioner shall have due regard to the percentage of compensation payable as assessed by a qualified medical practitioner. Therefore, the non-examination of the doctor who had issued medical certificate does not satisfy the requirement of law, because the Tribunal may not be in a position to determine whether the disablement would lead to total loss of earning capacity or whether the workman suffered permanent partial disability, enabling him to discharge normal duties with the employer or any other employer. A workman would be entitled to compensation irrespective of his ability to work if he suffers any scheduled injuries. However, in the case of disablement sustained by him, which falls within the definition of Section 2(1)(g), for the purpose of proper adjudication and determination, the examination of the doctor to assess the loss of earning capacity in case of non-scheduled injury is essential and an unexceptionable requirement of law. Any order of the Commissioner without applying the statutory requirement of Section 4(1)(c)(ii) and explanation (ii) would be contrary to the statute, and cannot be sustained. Therefore, in case of non-scheduled injury, to assess the loss of earning capacity, it is mandatory to examine qualified medical practitioner.

(underlining is ours)

20. In *United India Insurance Co. Vs. Sethu Madhavan*, , a Full Bench of the Kerala High Court interpreted Section 4(1)(c) of the Act and held:

It is only in cases coming u/s 4(1)(c)(ii) there can be a dispute as to whether the Commissioner can disregard the loss of earning capacity assessed by the qualified Medical Practitioner or that he can come to his own conclusion on the basis of other evidence in the case. In para 10 of the decision in *United India Insurance Co. Vs. Sethu Madhavan*, , the Division Bench held that a certificate prescribing the nature of the injury and its impact on the organism of the human body involves technical and special knowledge with regard to the same and, therefore, an expert opinion as regards that aspect becomes necessary and that the effect on the functioning of the organism is also a matter for the expert. But it was held that how far that would affect the workman's earning capacity depends on other factors also and that cannot be a matter exclusively for the expert to say. It continued to observe that this would depend upon not only the physical condition of the injury and the place where the injury was sustained, but would also depend upon the nature and character of the avocation of the workman at the time when he sustained the injury.

But when the statute specifically postulated that the compensation to be

awarded should be proportionate to the loss of earning capacity, as assessed by the qualified Medical Practitioner, permanently caused by the injury, we cannot obviously overlook the legislature's intention in accepting and recognizing the expert opinion of the Medical Practitioner. It is only the medical practitioner who can, in the circumstances of the case, assess the loss of earning capacity. It would certainly depend on the facts and circumstances of each case. To hold that the Commissioner can disregard it without calling for any other data would be doing violence to the statutory provision. Of course, on the basis of the evidence tendered before the Commissioner, if he finds that the medical certificate issued by the medical practitioner cannot be accepted, he can certainly refer the applicant to the Medical Board for expert opinion and report. Without doing so, coming to a decision of his own based on the interested testimony of the applicant would not be justifiable. As it is always open to the Commissioner to send the applicant before a Medical Board, he can very well adopt that method in a case where he finds that the certificate issued by a qualified medical practitioner is found wanting or suffers from any infirmity.

In view of the newly incorporated words "as assessed by the qualified medical practitioner" by virtue of Act 22 of 1984, its importance and significance cannot be overlooked. As the legislature in its wisdom chose to incorporate the aforesaid words into Section 4(1)(c)(ii), we cannot hold that it has been incorporated with no purpose. It is really with a purpose that it has been enacted. In view of the incorporation, it is not a case of ambiguity at all. In such a situation Court is not justified in stultifying the comprehensive language used by the legislature especially when there is no ambiguity at all. The intention of legislature has to be collected from the words employed in the statute. In a case where there is no ambiguity in the words used in a provision, the Court cannot add or subtract words by its own construction. This is especially so when words are incorporated in a particular provision in a statute with a definite purpose. That purpose cannot be read down by judicial interpretation. In other words, when a provision in a statute is itself clear and unambiguous due significance must be attached to it. In other words, when the legislature used appropriate terminology, the statute has to be read in accordance with the words used therein.

In this context, we have necessarily to consider how exactly Section 4(1)(c)(ii) stood prior to Act 22 of 1984. Prior to the incorporation, compensation for the injury not specified in Schedule I will have to be decided on the basis of the percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity caused by the injury. In the case in hand, as doctor's certificate did not specifically mention the percentage of loss of earning capacity, there was no question of the Commissioner being bound by such evidence. But when the Parliament specifically incorporated the words "as assessed by the qualified medical practitioner", its significance cannot be overlooked.

The general words in a statute must receive a general construction unless there

is something in the Act itself such as the subject-matter with which the Act is dealing or the context in which the said words are used to show the intention of the legislature that they must be given a restrictive meaning. The words in question do not warrant that they must be given a restrictive meaning and the commissioner can determine the compensation ignoring the report of the medical officer with regard to the assessment of losses of earning capacity. The importance of the words cannot be cut down or it cannot be read as if it were not there. Importance and significance of the words in its context cannot be read down by usurping legislative functions by the Court. It is apposite to refer to *Union of India v. Deoki Nandan Aggarwal* AIR 1992 SC 96 where the Supreme Court held:

to invoke judicial activism, to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

The first task in construing words in a statute is to give it its plain and ordinary meaning and then to ascertain whether the context or some principles of construction require that any qualified meaning has to be placed on them. Various provisions of the Act do not enable us to hold that the bracketed portion in the relevant Sub-section requires to be given a qualified meaning.

In fact the bracketed words were incorporated into the statute obviously with a view to curtail the possibility of the Commissioner arbitrarily determining the compensation. On his whims and fancy the Commissioner cannot determine the compensation under the Act. So long as there is no provision which enables the Commissioner to determine the compensation ignoring the Medical Practitioner's report, there is no question of the Commissioner avoiding it unless, of course, he wants a second report from the Medical Board.

In a case where there is no such report it is always open to the party concerned to get such report from the qualified medical practitioner who treated him for the injury sustained by him. It is equally possible for the opposite parties to get a report from the qualified Medical Practitioner. On a vacuum the Commissioner cannot, by substitution of his own conclusions, decide the compensation amount.

21. In *National Insurance Co. Ltd. v. Susanta Das* (9 supra), a Division Bench of Calcutta High Court rejected the contention of the appellant that the workman having lost only one hand, the loss of earning capacity should be 50% because Schedule I prescribes 100% loss of earning capacity in case of loss of both hands.

22. In *S.S. Patil v. Erappa Basappa Bhavihal* (2004) 104 FJR (Kar.) (F.B.) a Full Bench of Karnataka High Court referred to the provisions of two definitions and Section 4 and laid down the following proposition:

A reading of the aforesaid provisions makes it clear that an employer is under an obligation to pay compensation to the injured workman in accordance with the provisions of chapter II of the Act. His liability to pay compensation is not dependent on the claim to be made by the injured person. Therefore, the

moment an accident takes place in his establishment and a workman is injured, if the injury which is suffered by the said workman is specified in Schedule I, the employer is bound to pay the compensation as mentioned in Schedule I read with Schedule IV. In the event the employer does not accept the liability for compensation to the accident claimed by the workman he is bound to make a provisional payment based on the extent of liability which he accepts and such payment shall be deposited with the commissioner. In the event of his committing any default he will be liable to pay the interest and penalty for delayed payment. The problem arises in respect of an injury not specified in schedule I because the act does not provide any guidance to the employer about the loss of earning capacity which is the basis for making payment of compensation. It is in this background, an amendment was effected to the act by Act 22/1984 which came into force from July 1, 1984. By virtue of the amendment it is made clear in the case of an assessment made by the qualified medical practitioner regarding the disability and loss of earning capacity. It is because of the lacuna in the legislation prior to 1984 coupled with a statutory obligation imposed on the employer to pay compensation immediately after the accident to an injured person, as the act did not provide what is the amount of compensation in respect of the injury not specified in Schedule I this amendment became necessary. Therefore, the assessment by a qualified medical practitioner would aid in assessing the compensation payable to an injured. As the medical practitioner though well versed regarding the disablement arising on account of the injury sustained, is not duly qualified to assess the loss of earning capacity, an Explanation II was added by amendment making it clear that in assessing the loss of earning capacity for the purpose of Sub-clause (2), the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I. Therefore, the law took care to see that the medical practitioner assesses the loss of earning capacity also in addition to the assessment regarding disablement and in so assessing he shall have due regard to what is contained in schedule I of the act. Though the commissioner could have assessed the loss of earning capacity on the basis of the medical report to be submitted by the medical practitioner, the legislature in its wisdom thought it fit that if a commissioner, could assess the loss of earning capacity on the basis of Schedule I a duly qualified doctor could also do the same. Therefore, as the employer has to pay compensation even in respect of injuries sustained which are not mentioned in Schedule I immediately after the accident the legislature thought it fit to confer on the medical practitioner the power to assess the loss of earning capacity also as that would serve the purpose of the act better. If the employer accepts the assessment made by the qualified medical practitioner in respect of the loss of earning capacity and pays the compensation the matter ends there. Such assessment is valid and legal and payment made on the basis of such assessment is also legal and valid and the object with which the act was passed is fully achieved.

23. In *Vanajakshan Vs. Joseph*, , a Full Bench of Kerala High Court held that compensation has to be assessed with reference to loss in earning capacity and not the ability to perform the duties of the job, which was being done by the workman at the relevant time.

24. In *Shankarlal Vs. General Manager, Central Railway and Another*, , a learned Single Judge of Madhya Pradesh High Court interpreted the above reproduced provisions, referred to various decisions and held:

Therefore, from the definitions of "partial disablement" and "total disablement" and the decisions referred to above, in a case where injury is a non-scheduled one and there is no amputation, incapacity to work is to be judged in relation to the work for which the workman was engaged at the time of accident and not that such a workman could work on another job of lighter duties assigned to him after the accident, on the same pay and emoluments which he was drawing at the time of accident....

25. Though none of the above judgments directly deal with the question about the relevance of entries in Parts I and II of Schedule I in the matter of assessment of loss of earning capacity for non-schedule injuries, the ratio which can be deduced from the law laid down in those cases is that in the case of unspecified non-scheduled injuries, the compensation is to be paid keeping in view the loss of earning capacity as assessed by the qualified medical practitioner and the Court's discretion to award compensation is not controlled by the entries contained in Parts I and II of Schedule I. The quantum of compensation to be awarded to the workman will always depend on the assessment made by the qualified medical practitioner on the issue of the loss of earning capacity of the workman. If the judgment of the learned Single Judge in *National Insurance Co. Ltd. v. Rajesh Heimandge* (2 supra) is considered in the light of the above discussion, we do not have any hesitation to hold that the same lays down a correct law.

26. The question referred by the learned Single Judge is answered in the manner indicated above. The appeal may now be listed before the appropriate Single Bench.