

(1998) 11 KAR CK 0030

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2205 of 1997

Nisar Ahmed Abdul Rahiman Killedar

APPELLANT

Vs

Babulal Achal Singh Raj Purohit and Another

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Workmens Compensation Act, 1923 — Section 2 (1), 2 (g), 4, 4 (1) (c)

Citation : (2000) ACJ 58 : (1999) 82 FLR 808 : (1999) ILR (Kar) 2803 : (1999) 2 KarLJ 445 : (1999) 2 LLJ 1337

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Sri R.G. Sabhahit, for the Appellant; Sri V.V. Joshi and Sri H.G. Ramesh, for the Respondent

Judgement

1. Admit.

Heard the arguments of the learned Counsel for the parties.

2. The only controversy raised in the present matter is if a driver is not capable of driving the vehicle, whether it should be considered 100% loss of earning capacity. Learned Counsel for the appellant has referred the judgment given in the case of Oriental Insurance Co. Ltd. Vs. Kashim and Another, . In that case the Doctor has assessed the loss of earning capacity at 100% and the Commissioner has assessed the loss of earning capacity of 100% which was upheld by this Court. Learned Counsel for the respondent has pointed out that the permanent total disablement has been defined u/s 2(1) as under:

"2(I) "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";

Partial disablement is defined u/s 2(g)

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

3. From the perusal of the above provisions of Section 2(1) it is clear that there is deeming provision for total disability where the workman was incapable of doing all the works which he was capable of doing at the time of the accident resulting from such disablement. In the definition of partial disablement as provided u/s 2(g) the proviso provides that every injury specified in Schedule I, Part II shall be deemed as permanent partial disablement.

4. Section 2(1) refers to incapacity to perform work which the workman was capable of performing at the time of accident while u/s 2(g) it is only reduction of earning capacity. Total or partial disablement can be temporary or permanent.

5. In case of total disablement loss of earning capacity is 100% while in the case of injuries resulting in permanent partial disablement, different percentage has been given in the schedule. The percentage of loss of earning capacity in the present case is fixed by the statute itself. Compensation is to be given on the percentage given for loss of earning capacity. In case of partial permanent disablement even if the worker is not capable of performing that duty which he was performing at the time of accident such partial disablement cannot be considered total disablement unless the injuries result in loss of earning capacity of 100% or more than 100% in aggregate as provided in Part II of Schedule I.

6. Section 4 provides for amount of compensation.

7. u/s 4(1)(c) where the permanent partial disablement results from the injury -

(1) in the case of 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 is to be paid;

(2) in the case of 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.

8. If these provisions are taken into consideration the permanent partial disablement in the case of the appellant would entitle him only for the compensation on the basis of loss of earning capacity. It cannot be considered that there is total loss of earning capacity in case of partial disablement. It is true that there is deemed fiction under the provisions of Section 2(g) but it refers to permanent partial disablement which are deemed as per the Schedule I, Part II. If the injury is specified in Part II, then the compensation is to be paid in accordance with the provisions of Section 4(1)(c), according to the percentage of loss of earning capacity as given in Part II of the Schedule and if the injury is not specified thereunder in that case, the proportionate loss of earning capacity is to be assessed by qualified medical practitioner. Loss of earning capacity is assessed on the basis of the evidence of qualified medical practitioner at 15% in the right leg and 30% of the right foreleg. Assessment of loss of earning capacity at 50% on that basis cannot be considered as illegal.

9. In the case of Oriental Insurance Company Limited, *supra*, the driver was considered not fit to drive the vehicle and thus the loss of earning capacity was assumed at 100%. This judgment has not taken into consideration the judgment given in the case of Divisional Manager Ksr Tc. Vs. Bhimaiah, , where it was considered that if the injury was not one of the injuries mentioned in Schedule I which are deemed to result in permanent disability, 100% loss of earning capacity cannot be assumed. Determination of compensation in accordance with the provisions of Section 4 is to be made on the basis of percentage of loss of earning capacity which has rightly been assessed at 50%. Thus the contention that the petitioner is entitled for compensation treating loss of 100% earning capacity cannot be considered. 100% loss of earning capacity is in respect of injuries specified in Schedule I, Part I. Since the compensation is depending on percentage of loss of earning capacity which is fixed under the schedule and if not specified there then on the advise of the Doctor the assumption of 50% of loss of earning capacity therefore cannot be considered to be illegal. The decision given in the case of Oriental Insurance Company, *supra*, cannot be applied as it is without considering the judgment given in the case of Bhimaiah, *supra*, and also ignoring the provisions of Section 4 under which the compensation is determined and the percentage of the loss of earning capacity is provided in the schedule.

10. Appeal having no force is accordingly dismissed.