
(1996) 08 MP CK 0034
In the Madhya Pradesh High Court
Case No : M.A. No. 151 of 1992

Oriental Insurance Co.

APPELLANT

Vs

Beti Bai (Smt.) and Others

RESPONDENT

Date of Decision : 03-08-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4

Citation : (1997) 2 ACC 231

Hon'ble Judges : Usha Shukla, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Vivek Dusia, for the Appellant; Narendra Chouhan and S.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. Insurer of truck No. CPK-3534 has filed this appeal u/s 30 of the Workmen's Compensation Act, 1923 (for short "W.C. Act") against the order dated January 30, 1992 passed in case No/. WC/17/91 (NF) by the Commissioner for Workmen's Compensation (Labour Court), Jabalpur.

2. The only contention raised by the appellant in this appeal is that the Respondent No. 1 was employed as labourer for loading and unloading purpose on truck No. CPK-3534 under the employment of the Respondent No. 2 who received injuries, fractures of the right arm and shoulder, the Commissioner for Workmen's Compensation illegally determined the loss of earning capacity of 100% disability and awarded compensation as calculated according to the Schedule IV u/s 4 of the W.C. Act. Schedule I under Sections 2(1) and 4 even in case of amputation through shoulder joint specifies percentage of loss of earning capacity as only 90% and for loss of hands and thumb is 60% at serial No. 1 and 5 of Part II of Schedule I. Therefore the award of compensation is contrary to the compensation as specified even in relation to a case of amputation. The respondent has not suffered any amputation, but it is the fracture which is malunited.

3. It is well settled that if a workman establishes that he has been incapacitated to perform his job and has become totally disabled he is not debarred from claiming more compensation than specified in the Schedule for loss of earning capacity. A Division Bench of this Court to which one of us S.K. Dubey, J. was a Member in case of United India Insurance Co. Ltd. v. Balmat Singh and Anr., 1976 JLJ P.253 following the decision of Supreme Court in case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and decision of Karnataka High Court in National Insurance Company v. R. Vishnu and Anr. 1992 A.C.J 590 has taken the view.

4. In case in hand from the evidence of the Respondent No. 1 and that of Dr. Narendera Kumar Vasudeo it is evidently clear that upper limb at fore- arm or right hand, right elbow as well as shoulder is deformed because of malunion of the fracture. Abduction restricted beyond 90° flexing and rotation restricted by 30°, elbow's flexion full extension is restricted by 30°. The doctor stated that it is a case of partial permanent disablement due to injuries in the right upper limb, she is a total loss as a labourer ; and she has been physically incapacitated 100%. The Commissioner for Workmen's Compensation has found on the evidence recorded a finding of fact that the Respondent No. 1 cannot perform or discharge her duties as labourer, and cannot perform the job which she was performing prior the accident. The finding so recorded is a finding of fact which is neither perverse nor manifestly illegal, hence cannot be interfered in appeal u/s 30 of the W.C. Act. As no substantial question of law is involved the appeal is devoid of any merit.

5. In the result appeal fails and is dismissed with costs.