

(2001) 04 MP CK 0064
In the Madhya Pradesh High Court
Case No : M.A. No. 762 of 2000

Ranjit Singh

APPELLANT

Vs

Gurbaksh Singh and Others

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Employees Compensation Act, 1923 — Section 4

Citation : (2003) ACJ 303

Hon'ble Judges : Bhawani Singh, C.J.;A.M. Sapre, J

Bench : Division Bench

Advocate : S.S. Chawla, for the Appellant; Anil Goel, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award of the Commissioner for Workmen's Compensation, Indore in Case No. 43 of 1997 (W.C.N.F.) dated 19.1.2000, whereby the claimant has been awarded compensation of Rs. 87,351 with interest at the rate of 12 per cent per annum, claimant is not satisfied with this award, therefore, it has been challenged through this appeal.

2. The claimant was a cleaner with the truck No. MP 09-KA 7765. When truck reached Nagod Road from Satna his truck was hit by another truck coming from the opposite side. The accident resulted in serious injuries to his left and right feet apart from the fracture of knee causing 100 per cent disability. He was earning salary of Rs. 2,000 per month apart from Rs. 1,200 diet money. At the time of the accident he was 28 years old. A claim for Rs. 2,54,184 has been raised. Gurbaksh Singh, respondent No. 1, states that the vehicle is insured with the respondent No. 3 United India Insurance Co. Ltd., therefore, it is responsible to pay the compensation. The respondent No. 2 states that the claimant was not employed with respondent No. 1 and he did not receive the injuries during the employment, as such, the averments as to age, salary and accident are imaginary and unfounded. The Workmen's Commissioner has found that the

claimant was a workman and he received injuries in this accident causing disablement to the extent of 35 per cent. Consequently, amount to the extent of Rs. 87,351 has been awarded.

3. Mr, S.S. Chawla, learned Counsel for the claimant submits that the compensation awarded is grossly inadequate. Due to the serious injuries, not scheduled, the claimant is not in a position to work, therefore, his earning capacity has been reduced by 100 per cent. To sustain this view, the learned Counsel for the appellant places reliance on the decisions reported in United India Insurance Co. Ltd. Vs. Balmat Singh and Another, ; Gurucharansing Hardayalsing Sethi v. Narhari Laxman Shinde 1997 ACJ 372 (Bombay); Oriental Insurance Co. Ltd. Vs. Kashim and Another, ; Shankarlal Vs. General Manager, Central Railway and Another, and National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another, . Precisely, the submission of the learned Counsel is that since the workman has been completely disabled from earning anything, therefore, the disablement is 100 per cent. Consequently, the compensation has to be assessed accordingly. This submission is opposed by Mr. A. Goel, learned Counsel for United India Insurance Co. Ltd., Indore. It is submitted that the claimant is not completely disabled from earning anything. Assuming, looking to the nature of the injuries, he cannot work as a cleaner but he can get any other assignment. Mr. Goel submits that certificate of the medical expert as to the extent of the percentage of the disablement, is of fundamental importance, we can find out the extent of disability and assess the earning capacity of the claimant.

4. After due consideration of the submission advanced by the learned Counsel for both the sides and looking to the evidence on record, particularly the medical evidence, we find that the earliest version in the case is that the claimant suffered 48 per cent disability in this accident, therefore, we are not satisfied with the view taken by the Commissioner, Workmen's Compensation that the disability suffered is to the extent of 35 per cent.

5. Consequently, we proceed to determine the compensation in this case. Mr. Goel submitted that as per the Explanation II to Section 4 of the Workmen's Compensation Act, 1923, the claimant was receiving salary of Rs. 2,000 per month, therefore, his salary has to be taken accordingly and assessed as per the Schedule IV settling the factor (207.98) the claimant being 30 years old at the time of the accident. The Workmen's Compensation Act, 1923 has been amended from 8.12.2000 and in Explanation II figure "4000 rupees" has been inserted in place of "2000 rupees" existing under the unamended Act. Therefore, this being amended by legislature and we dealing with the dispute after the amendment has come into force, it is desirable in the interest of justice that the amendment made to Explanation II to Section 4(1) is applied for the determination of the compensation in this case. It is not the case where the claimant cannot do any other work/job than that of the cleaner, he was doing at the time of the accident. After holding that the claimant suffered permanent disability to the extent of 48 per cent and other factors being same and

calculating income of the claimant at Rs. 3,000 including Rs. 1,000 towards the diet money receivable by the claimant, the claimant would be entitled to compensation of Rs. 1,79,694.70. Accordingly, the appeal is allowed, compensation is enhanced to Rs. 1,79,694.70 payable by United India Insurance Co. Ltd. within a period of two months. It will carry interest at the rate of 12 per cent from the date of accident till payment. The amount, if any, paid towards compensation assessed by Workmen's Compensation Commissioner, will be deducted from remaining amount of compensation assessed. Costs on parties.