

(2012) 09 KAR CK 0265

In the Karnataka High Court

Case No : M.F.A. No. 9209 of 2008 (WC)

Regional Manager National Insurance Co. Ltd. Regional
Office, Subharam Complex, 144, M.G. Road Bangalore -
560001

APPELLANT

Vs

Maresh Yadav

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Workmens Compensation Act, 1923 — Section 2 (1) (1)

Citation : (2012) 09 KAR CK 0265

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, for the Appellant; Sriyuths T.N. Viswanatha,
Advocate for C/R1, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda

1. The Insurance Company has filed this appeal, raising following substantial questions of law:-

1. Whether the Commissioner can go beyond the provisions of law to grant compensation?

2. Whether there is any justification for the Commissioner for Workmen's Compensation to ignore Serial No. 19 contained in Part II of Schedule I of W.C. Act which would mandate 60% loss of earning capacity in the event of amputation of leg from middle thigh to below knee?.

3. Whether the decision rendered by the Commissioner is opposed to the Full Bench decision of this Hon'ble Court in the case of Shivalinga Shivanagowda Patil & Others Vs. Erappa Basappa Bhavihala & Others, reported in ILR 2004 KAR 193

I have heard learned counsel for Insurance Company and learned counsel for

claimant.

2. It is not in dispute that as a result of accident, right. lower limb of claimant was imputed below knee level. It is also not in dispute that claimant was a driver by occupation. The Commissioner for Workmen's Compensation having regard to nature of disability, which is total disablement, has determined loss of earning capacity at 100%.

3. It is the contention of Insurance Company that assessment of loss of earning capacity should have been in terms of Schedule-I of the Workmen's Compensation Act, 1923 (for short, "the Act"). In terms of Schedule-I Part II of the Act, amputation below knee with stump exceeding 12.70 cms would result in 50% loss of earning capacity.

4. The learned counsel for Insurance Company has relied on a decision of this court, reported in ILR 2004 KAR 193 (in the case of Shivalinga Shivanagowda Patil & Others Vs. Erappa Basappa Bhavihala & Others), wherein this court has held that loss of earning capacity will have to be determined not only with reference to the work which the workman was performing before the accident but also with reference to all the work, which the workman was capable of doing after the accident.

5. In a judgment reported in 2010 AIR SCW -137 (in the case of S. Suresh Vs. Oriental Insurance Co. Ltd. & Anr.), the Supreme Court dealing with the expression "total disablement" u/s 2(1)(1) of the Act has held:-

7. The correctness of the impugned judgment is questioned mainly on the ground that the claimant being a lorry driver, the loss of his right leg ipso facto meant a "total disablement" as understood in terms of Section 2(1)(1) of the Act and as such the compensation payable to the claimant had to be computed on that basis. In support of the plea, reliance is placed on a four-Judge Bench decision of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, . In that case, a carpenter had suffered amputation of his left arm from the elbow. This Court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under:

5. The expression "total disablement" has-been defined in Section 2(1)(1) of the Act as follows:

(1) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

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. This is obviously a reasonable and correct finding."

8. In our view, the ratio of the said judgment is squarely applicable to the facts at hand. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence under the Motor Vehicles Act.

In the instant case, it is not in dispute that right lower limb, of claimant was imputed below knee level, as a result of injury suffered in the accident. It is also not in dispute that claimant was working as a driver of heavy goods vehicle. Therefore, claimant suffers from total disablement to perform the work, which he was performing before the accident.

6. In view of what has been held by the Supreme Court in the aforestated judgment, the contention of Insurance Company that loss of earning capacity should have been determined in terms of Schedule-I Part II of the Act cannot be accepted. The substantial questions of law are answered against the Insurance Company. In the result, I pass the following: -

ORDER

The appeal is dismissed. The amount deposited by the Insurance Company shall be transferred to the Commissioner for Workmen's Compensation, Sub Division-1 at Bangalore.