

(2003) 12 KAR CK 0011

In the Karnataka High Court

Case No : M.F.A. No's. 27 of 1996, 558, 2986, 3039/97 and 3912/99

Shivalinga Shivanagowda Patil and Others

APPELLANT

Vs

Erappa Basappa Bhavihala and Others

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 11, 19, 22

Citation : (2004) 2 ACC 470 : (2004) ACJ 333 : (2004) 101 FLR 178 : (2004) ILR (Kar) 193 : (2004) 1 KCCR 685 : (2004) 1 LLJ 1089

Hon'ble Judges : N.K. Jain, C.J;N. Kumar, J;H. Rangavittalachar, J

Bench : Full Bench

Advocate : A.N. Krishnaswamy, for R. Jaiprabad and O. Mahesh, for the Appellant; Gangadhara Sangolli, N.S. Venugopal, Suresh M. Latur, C. Shivakumar and T.C. Satishkumar for R1, for the Respondent

Judgement

1. This Reference has been placed before us as per the direction of the Chief Justice dated 16.9.2003. Initially, a learned Single Judge of this Court referred MFANo. 27/1996 on 10.11.2000 to the Division Bench. The Division Bench had found that the conflicting decisions rendered by the co-ordinate benches of this Court have led to a certain amount of confusion. The Division Bench in Divisional Manager Ksr Tc. Vs. Bhimaiah, held that the disability does not amount to total disablement, as the workman was capable of performing duties and executing works other than driving. Another Division Bench in NATIONAL INSURANCE CO. LTD. v. R. VISHNU 1992 (1) LLN 178, upheld the order by which the Commissioner had treated amputation of left leg of workman as total disability for awarding compensation. On the basis of these two Division Bench decisions, conflicting views have come on the point in other Single Bench decisions. Therefore, for a proper pronouncement on the point, these cases are referred to Full Bench vide order dated 29.8.2003.

2. The necessary facts leading to this reference are a few and for the sake of convenience, we may refer to the facts in the case of MFA 27/1996, which are as

follows:

The respondent is alleged to be under the employment of appellant No. 1 as Driver of the vehicle bearing Registration No. FA - 24-324. While driving the said vehicle he sustained injuries in an accident, which occurred on 22.2.1993 near Kittur village along National High way No. 4. A claim petition u/s 22(2) of the Workmen's Compensation Act, 1923 (for short the "Act") was filed claiming compensation of Rs. 1,10,000/- with interest, for the injuries sustained in his right patella and knee joint. The doctor assessed the disability to 35%, whereas the Commissioner enhanced the disability to the extent of 80%.

In other identical matters, the Commissioner enhanced the disability from 40% to 80% in MFA 3912/99, from 30% to 80% on the basis of evidence of another Doctor in MFA 2986/97; from 50-55% to 75% in MFA 3039/97; and fixed the disability at 50% in absence of any medical evidence in MFA 558/97.

3. Since the questions involved in all the above appeals are similar and identical, as agreed the following common questions referred have been heard together and answered of by this common order.

4. The Division Bench has referred the following questions:

(i) Whether the Commissioner under the Workmen's Compensation Act can assess the loss of earning capacity without or in-disregard of the assessment of a qualified medical practitioner?

(ii) What is the procedure to be followed by the Commissioner for determining the compensation payable to the workmen in cases where neither the workman nor his employer has produced any medical evidence to show the extent of loss of earning capacity resulting from the injury sustained by the former?

(iii) Whether the determination of the loss of earning capacity has to be by reference to the work, which the workman was performing at the time of the accident, or by reference to his capacity to do any other work after he has sustained the disability?

iv) Whether the Commissioner can while determining the amount of compensation, award a compensation u/s 4(1)(b) of the Act for an injury that falls u/s 4(1)(b) r/w Part II of Schedule I to the Act?

5. Sri A.N. Krishna Swamy for Sri R. Jaiprakash and Sri Seetharama Rao, learned Counsel appearing for the Insurance Companies contended that while awarding compensation in respect of an injury not specified in Schedule I, the Commissioner has no option except to give effect to the assessment made by the Medical Practitioner in regard to loss of earning capacity. They relied on the judgments in the case of AMAR NATH SINGH v. CONTINENTAL CONSTRUCTIONS LTD., NEW DELHI 2001 (1) TAC 446, ORIENTAL INSURANCE COMPANY v. MOHAMMED 2002 (1) TAC 6926 and NEW INDIA ASSURANCE CO.LTD. v. BHARAT YADAV AND ANR. 2003 (2) TAC 299 Secondly, it was contended that in cases

where both the parties do not adduce evidence of a qualified Medical Practitioner regarding the loss of earning capacity, the Commissioner can get the injured examined by a Medical Practitioner and assess the loss. Thirdly it was argued that while determining the loss of earning capacity all the work which he was capable of performing at the time of the accident is to be seen and not only the work which he was performing at the time of the accident. Lastly it was contended that it is not open to the Commissioner to award higher amount of compensation as provided u/s 4(1)(b) while determining the compensation u/s 4(1)(c)(!).

6. On the other hand, Sri Nargund and Sri A.K. Bhat the learned Counsel appearing for the workmen submitted that the Commissioner is discharging a quasi-judicial function and he can see the correctness of the assessment made by the qualified Doctor. The learned Counsel submit that the Commissioner is not bound to act on such report mechanically and to hold the loss of earning capacity as assessed by the medical practitioner and as suggested by the learned Counsel for the appellant - insurance company. It is also stated that if medical evidence is not available, the Commissioner can get the medical evidence by a qualified Medical and loss of earning capacity is to be assessed as to whether the injured is capable of doing very same work which he was doing before the accident and not all the work which he was capable of performing before the accident. It is also contended that the Commissioner can award a higher amount of compensation than what is prescribed in Schedule -I, provided the workman substantiates his claim by producing additional evidence both in respect of disability and the loss of earning capacity. Learned Counsel submitted that the Commissioner can always award higher amount of compensation u/s 4(1)(b).

7. To consider the rival contentions and to answer the aforesaid questions, it is necessary to consider the object of the Workmen's Compensation (Amendment) Act, 1984 (Act 22/1984) (for short the "Amendment Act), its effect and the relevant definitions and the rules framed thereunder.

8. The main object with which the Act was passed is that the compensation should ordinarily be given to workmen who sustain personal injuries by accidents arising out of and in the course of their employment. The compensation payable under the Act is not dependant on any negligence on the part of the employer as it is not a remedy for employer's negligence but is rather in the nature of insurance of the workman against risks of accident. The Act is a social welfare legislation made for the interest of the workman. If any particular provision of the Act is capable of two interpretations, that which is more favourable to the person for whose benefit the legislature in its great wisdom has legislated it, has to be adopted. Such liberal construction would accomplish the humane and beneficial purposes of the legislation, the provisions of which are truly responsive to the social and economic needs recognized by our society and the Constitution. It makes an employer liable to pay compensation at a fixed rate. It is not a liability which arises out of tort, but one which springs out of the relationship of

master and servant. The total amount that a workman can get is fixed by the Act and is dependant not on the suffering caused to the workman or on the expenses incurred by him on his illness but on the difference between his wage earning capacity before and after the accident.

9. Now, we may refer to some important provisions of the Act. Section 3 of the Act is a charging section. The class of persons who are entitled to any benefits, under the Act are only those who can come within the purview of the term "Workman" as defined under Clause (n) of Sub-section (1) of Section 2. Section 4 read with Schedule I and IV prescribes the amount of compensation for the injury sustained, viz., a permanent total disablement, permanent partial disablement as well as temporary disablement both partial and total, which are defined in Section 4(1)(g) and (1) read with Part I of Schedule I. For injuries covered by Schedule I determination of loss of earning capacity would be a question of fact dependant on the nature of work of the injured person, the nature of the injury and other attendant considerations. The injured workman may be a casual labourer or a regular employee. The length of his service is irrelevant for the purpose of awarding compensation under the Act. Section 4-A provides for immediate payment of compensation and where the amount claimed is not acceptable to the employer he is bound to make a provisional payment of whatever amount is acceptable to him without prejudice to the workman's right to make any further claim. Sub-section (3) of Section 4-A provides for payment of interest and penalty in case of delay in payment of compensation. Section 11 provides for medical examination immediately after the accident. Section 12 provides for the principal employer's liability to pay compensation to the workman employed on contract also. Section 19 provides for settlement of disputes regarding the liability of any person to pay compensation or as to whether the person injured is a workman or not. Section 23 confers on the Commissioner the powers of a Civil Court under the CPC for the purpose of taking evidence on oath and for other matters mentioned therein. Section 25 deals with method of recording of evidence.

10. It is also seen that in order to achieve the object of the Act, Rules have been duly framed prescribing various procedures to be followed. They provide for framing of issues and writing of judgments, recording a finding on each of the issues. Therefore, it is clear the Act is a comprehensive piece of legislation providing for payment of compensation, arriving at settlement regarding compensation payable and settling disputes regarding payment of compensation.

11. We have heard the elaborate arguments advanced and perused the case laws cited above. Before we proceed, we shall consider the respective case laws cited before us.

11.1. In the case of Oriental Insurance Co. Ltd. Vs. Tajuddin Abdul Rahim Karanche, , it is held that the discretion of the Commissioner is now curtailed to a very large extent in as much as he will have to gauge the loss of earning capacity strictly on the basis of assessment done by the medical expert. It will be

necessary to lead medical evidence through the medium of a person who can be regarded as a qualified medical practitioner and that this doctor will have to be specifically informed about the job functions of the applicant and the bearing that the injury will have on these functions. The Commissioner shall take into account the fact that the law requires this procedure to be adopted and shall ensure that it is followed. Where the applicant or the employer produces a far better material, the Commissioner will not be precluded from making some departure from the medical evidence. The amendment of 1984 creates a situation whereby the Commissioner is required to go by this evidence or keep close to it and the Commissioner is therefore not permitted to make any radical departure from the evidence. In a given situation, if the Commissioner is dissatisfied with the evidence of one medical expert, it will certainly be open for him to seek further and better evidence.

11.2. In the case of *ORIENTAL INSURANCE COMPANY LIMITED v. KASHIM*, : ILR1996KAR793 it was held, where a driver is rendered unfit to drive the vehicle, the loss of earning capacity can be fixed at 100% even though the permanent physical disability is not that much.

11.3. In the case of *G.V. Venkatesh Babu and Another Vs. Krishna Kumar*, , it has been held that ultimately one has to look into the actual avocation that is carried on by the workman-claimant and then assess the loss of earning capacity. The criterion seems to be whether he is able to do the same work hitherto he was doing and was employed to do. For this, there has to be cogent and proper evidence.

11.4. In the case of *Hanumantha Gowda Vs. Devaraju*, a learned Single Judge of this Court held, the total disablement should be assessed vis -a-vis the work the worker was carrying. If the worker is disabled to perform all the work he was engaged to perform it amounts to total disablement. The fact that he can do some other work elsewhere is no ground to state that he is not totally disabled. His capacity to do some other type of work did not earn him the status of worker under the particular employer. If by the accident, the worker loses his employment under the Act under that particular employer which employment brought him under the purview of the Act and the relationship of employer - worker is brought to an end, then that amounts to the "total disablement" contemplated under the Act.

11.5. The Supreme Court in the case of *AMAR NATH SINGH v. CONTINENTAL CONSTRUCTIONS LIMITED, NEW DELHI* (Supra) while referring to *Pratap Narain Singh Deo, Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, held that the decision turned on its own facts and, therefore, the principles therein cannot be extended to the present case.

11.6. A Full Bench of the Kerala High Court in the case of *New India Assurance Co. Ltd. Vs. Sreedharan*, has held that in view of Section 4(1)(c)(ii), the Commissioner cannot ignore the certificate of a qualified medical practitioner and

fix the compensation arbitrarily.

11.7. The Kerala High Court in the case of *ORIENTAL INSURANCE COMPANY v. MOHAMMED* (supra) has held that in cases falling under injuries specified in Schedule I for claiming benefit for total disablement there should be evidence that disablement is such that it incapacitates the workman for all work which he was capable of performing at the time of the accident as mentioned in Section 2(1) of the Act or unless it is injury specified in Part II Schedule I resulting in total disablement and in the absence of the same merely on the ground that the injured is not capable of performing the very same work which he was performing before the accident, it cannot be said that he suffered permanent disablement and on that ground loss of earning capacity has to be assessed.

11.8. In the case of *NEW INDIA ASSURANCE COMPANY LIMITED v. BHARAT YADAV AND ANR.* (supra) as the Commissioner had assessed the loss of earning capacity without the assessment by a qualified medical practitioner in respect of an injury which is not mentioned in Schedule I his award was set aside and the matter was remanded back to the Commissioner to have the injured examined by a doctor and thereafter to have the benefit of assessment of a qualified medical practitioner before he determines the amount of compensation.

11.9. In the case of *NATIONAL INSURANCE COMPANY LIMITED v. BHIM DEY @ BHOLA DEY AND ANR.* 2002 (1) TAC 591 the compensation assessed by the Commissioner without the aid of the assessment by the medical practitioner was set aside and the matter was remanded back to him to have the assessment made by a qualified medical practitioner after examining the injured.

12. In order to appreciate the points in controversy, it is necessary to have a look at the definition of "partial disablement" and "total disablement" as defined under the Act. Section 2(1)(g) defines "partial disablement":-

"(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".

Section 2(1)(1) defines "total disablement":-

"(1) "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 combination of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred

per cent or more".

Section 4 of the Act which deals with amount of compensation payable reads as under:-

"4. Amount of compensation - Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

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

(b) Where permanent total disablement an amount equal to sixty percent ablement results from the injury. of the monthly wages of the injured workman multiplied by relevant factor;

or

an amount of ninety thousand rupees, which-ever 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 partial disablement results in part II of Schedule I, such from the injury 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 (as assessed by the qualified medical practitioner) permanently caused by the injury; Explanation I - Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II-In assessing the loss of earning capacity for the purposes of Sub-clause (ii), 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.

13. Re. question Nos. (i) and (iv) - 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 dependant 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 1.7.1984. By virtue of the amendment, it is made clear in the case of an injury not specified in Schedule I, the compensation payable by the employer would be on the basis 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 medial 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.

14. The problem arises when the assessment made by the qualified medical practitioner is not accepted by the employer and when he declines to make the payment on that basis. In a case, even the injured may not accept the assessment made by the qualified medical practitioner. It is possible that a qualified medical practitioner could assess the loss of earning capacity contrary to the guidelines prescribed in schedule I. In all such cases, it is open to the parties who are affected by such assessment of the medical practitioner not to accept his assessment and lead independent evidence by way of evidence of another medical practitioner and show that the assessment made by the earlier medical practitioner is not correct. It is only when either of the parties does not accept the assessment of the medical practitioner, to settle the said dispute, the intervention of commissioner is required. In that context, Section 19 of the Act provides that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a commissioner, Sub-section (2) of Section 19 excludes the jurisdiction of the Civil Court to decide and settle such disputes. It expressly provides that no Civil Court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. Therefore, it is clear that the Commissioner has been empowered to decide and settle disputes regarding the nature or extent of disablement also. In this context it is useful to refer to the wording used in Schedule I. Schedule I contains two parts, in both of which the phrase used is list of injuries "deemed to result" in permanent total disablement. Therefore, it is clear the law declares a particular injury to result in permanent, total or partial disablement. The word "deemed" means in fact and truth it may not. Therefore, even in cases of injuries which are stipulated in Schedule I, if the nature or extent of disablement is disputed, the Commissioner shall settle the said dispute after holding an enquiry as prescribed under law. Similarly, if the Commissioner is competent to settle disputes regarding nature or extent of disablement which purely falls within the province of medical evidence certainly the loss of earning capacity assessed by a medical practitioner if it is disputed also could be settled by the Commissioner. In settling the dispute the Commissioner cannot completely ignore the assessment made by the medical practitioner. If the said assessment is disputed, the Commissioner has to find out whether the nature and extent of disablement assessed by the medical practitioner is just and proper; find out whether the medical practitioner has taken into consideration the percentage of loss of earning capacity in relation to which injuries specified in Schedule I as mandated by Explanation II to Section 4(1)(c)(ii) and then come to

the conclusion whether the assessment made by the qualified medical practitioner is to be accepted or not. It is also open to him to have a second opinion from a qualified medical practitioner. If the parties themselves adduce evidence of a qualified medical practitioner regarding the extent and nature of disablement suffered and of the loss of earning capacity, that ought to be taken note of by the Commissioner while settling the dispute between the parties regarding the loss of earning capacity. Under the circumstances, it cannot be said that the assessment made by the qualified medical practitioner is final and sacrosanct. The same can be assailed by either of the parties. In other words, that the Commissioner is bound to give effect to the said assessment and has no right to sit in judgment over the assessment so made by the qualified medical practitioner, is not acceptable. Otherwise also, for instance, if the qualified medical practitioner gives a certificate of disability to the extent 90% or more, then in all cases, if they cannot be questioned and become final and, if the argument of the Insurance Company is accepted, in our view, it will lead to colossal results, which is not the intention of the Legislature, and thus the proposition is neither correct nor acceptable.

15. So far as regards the argument that the Commissioner under the Act is not acting as a judicial authority, and as such he has no discretion left except to pass an award of compensation on the basis of the assessment of loss of earning capacity made by the qualified medical practitioner, this argument has no substance and runs counter to the statutory provisions contained in the Act. As already noted, Section 19 of the act confers on the Commissioner the power to settle disputes between the parties with regard to the liability of any person to pay compensation including any question as to whether a person injured is or is not a workman or as to the amount or duration of compensation including any question as to the nature or extent of disablement. All these questions shall be decided by the Commissioner and Commissioner alone. As already stated, Sub-section (2) of Section 19 categorically excludes the jurisdiction of the Civil Court to decide these disputes. Section 23 of the Act mandates that the Commissioner shall have all the powers of a Civil Court under the CPC for the purpose of taking evidence on oath and for enforcement of attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be Civil Court for all purposes of Section 195 and Chapter 26 of the Code of Criminal Procedure, 1973. Section 25 provides the mode in which the Commissioner shall record evidence in the enquiry to be held by him. It also provides for recording of the evidence of a medical witness. Rules framed under the Act provide for framing of issues after the pleadings are complete. Rule 28 categorically states after considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend. Then, Rule 32 provides how a judgment is to be written after the conclusion of the enquiry. It provides that the commissioner

shall record concisely a judgment, his finding on each of the issues framed and his reasons for such finding. A statutory appeal is provided u/s 30 of the Act to the High Court against the order of the Commissioner. If one of the parties were to contend that the assessment made by the qualified medical practitioner is not correct, it is in view of the aforesaid provisions Commissioner is bound to frame an issue to that effect and, on the basis of the evidence adduced for and against the said issue, is bound to pronounce his decision. It is not open to him to say that as he is bound by the assessment of loss of earning capacity made by the qualified medical practitioner he will not go into the correctness or otherwise of such assessment. Under the scheme of the Act, the Commissioner is discharging a judicial function in so far as settlement of disputes are concerned. That is why the law declares that he shall be a Civil Court for the purpose of settling the disputes and the Civil Court's jurisdiction is ousted. Issues are to be framed, judgment has to be rendered answering each issue raised in the case. Therefore, it is clear that the assessment made by a qualified medical practitioner is only in the nature of an expert evidence given to aid the Commissioner to determine the amount of compensation payable which the Commissioner is bound to take note of. As stated, if the correctness or validity of the said assessment is disputed by either of the parties, he is bound to pronounce his decision on the same which includes not agreeing with the assessment made by the qualified medical practitioner if the evidence on record otherwise supports such a contention or for any good reason.

16. Re question No. 2:- If in a given case if there is no assessment by the qualified medical practitioner and if both the parties to the dispute do not produce any medical evidence to show the extent and nature of disablement resulting in the injuries sustained, then u/s 11 of the Act, the report of the medical practitioner could be obtained. A statutory duty is imposed on the employer to offer the injured workman, after a notice is given by him, to be examined free of cost by a qualified medical practitioner. Therefore, once the injured workman notifies the employer about the injury, the Act provides for examination of such injured workman by a qualified medical practitioner free of cost. When such an offer is made by the employer if the workman refuses to submit himself for examination, his right to compensation stands suspended during the continuance of such refusal. The statute also provides for the Commissioner to get the injured workman examined by a qualified medical practitioner at any time. Therefore, when a claim is made by a workman for compensation under the Act, the assessment of the medical practitioner regarding the nature and extent of disablement and the loss of earning capacity is the basis on which either the employer pays the compensation immediately after the accident or if the commissioner is called upon to settle the said dispute, the same is decided by him on the basis of such material. Under the circumstances, the Commissioner cannot, without the said assessment of the qualified medical practitioner, decide the amount of compensation payable. The question of Commissioner disregarding the said assessment would not arise. But,

at the same time it cannot be said that the Commissioner is bound by the assessment given by the qualified medical practitioner. It is only in the nature of an expert evidence. But, before him if it is specifically contended that the assessment of the qualified medical practitioner either with regard to the extent and nature of disablement or the loss of earning capacity is not correct and it is contrary to Schedule I, then the Commissioner has a statutory duty to settle the said dispute independent of the said assessment. While settling the said dispute the Commissioner may scrutinize the said assessment of the qualified medical practitioner and find out for himself the nature and extent of disablement and keeping in mind the loss of earning capacity stipulated in Schedule I broadly consider whether the assessment made by the medical practitioner is proper and just and if he is of the opinion that the said assessment is correct and proper, act on such assessment of the qualified medical practitioner in awarding the compensation. But, if the parties adduce acceptable evidence to substantiate their contention that assessment is wrong and if on such assessment he finds the assessment of the qualified medical practitioner is erroneous it is well within his jurisdiction not to act on the said assessment of the qualified medical practitioner and arrive at his own conclusion based on other evidence made available by the parties on record which may also include the assessment of loss of earning capacity by another qualified medical practitioner. It is also open to the commissioner to get the injured person examined by another qualified medical practitioner of his choice and then take into consideration the said assessment and then arrive at his own conclusion.

17. Re. Question Nos. (iii):- In so far as the question whether the determination of the loss of earning capacity has to be by reference to the work which the workman was performing at the time of the accident or by reference to his capacity to do any other work after he has sustained the disability is concerned, we have two Division Bench decisions of this Court taking somewhat conflicting views, which is the cause for this reference to the Full Bench. The first of the said judgment is in the case of *DIVISIONAL MANAGER, KSRTC v. BHIMAIHAH* (supra) wherein the workman was a driver of a bus and sustained injury which resulted in impairment of free movement of his left hand, disabling him from driving vehicles. As the said injury was not one of those injuries mentioned in Schedule I of the Act which are deemed to result in permanent total disablement, it was held that the nature of the disability is not to be determined with reference to and vis-?-vis the work the workman was performing at the time of the accident. Hence, the disablement did not amount to permanent total disablement, as the workman was capable of performing duties and executing works other than driving motor vehicles. In the said case the employer stated that they have no intention to discharge the workman from service and that he would be continued in service and his service as a driver would be protected but he would be given some other work.

18. In the case of *Siddappa Vs. General Manager, KSRTC*, , another Division Bench of this Court held as under:-

"All that Section 4(c)(i) read with Part II of Schedule I is that in the case of injury specified therein, the percentage of permanent total disablement to the extent specified therein must be deemed to have occurred without any further proof. That provision does not debar the payment of compensation u/s 4(1)(b) if, in a given case, it is proved that though the injury suffered by a workman falls under one of the items specified in Part II, having regard to the nature of the employment in which the workman concerned was employed, there has been permanent total disablement. If such a fact is proved, notwithstanding the fact that the injury suffered by a workman is one of those specified in Part II of Schedule I, he would be entitled to the compensation in accordance with the IV Schedule."

In the aforesaid judgment, the employer submitted that the appellant was found unfit for work in the Corporation in any class of service after the accident and, therefore removed him from service. In that context it was held that it was established conclusively that the appellant had suffered total permanent disablement.

19. In this context it is useful to refer to a judgment of the Supreme Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, After considering the definition of "total disablement" in Section 2(1)(1) this is what the Supreme Court has observed :-

"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. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no Justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of a crimson to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to set up on facts which have not been admitted or established."

20. The cases relied upon are not applicable as the Apex Court has nowhere said that the Commissioner has no Jurisdiction. As discussed, strictly speaking, all the aforesaid decisions were rendered on facts and no law as such has been laid down. If at all what has been laid down is that if an injury falls within Schedule I, the percentage of permanent total disablement to the extent specified therein must be deemed to have occurred without any further proof because the Act is a

piece of welfare legislation, social legislation which has to be construed in a more liberal sense in favour of the workman so that the assessment of loss of earning capacity made in the Schedule could be taken as the minimum compensation payable to the workman. If the workman disputes the extent and nature of disablement and consequently the assessment of loss of earning capacity and leads independent evidence to show that the injury which he has suffered is of a grave nature which disables him from performing any work, let alone the work which he was performing before the accident, it is open to the Commissioner under the Act to take note of that evidence and award suitable compensation in excess of what is stipulated in Schedule I read with Schedule IV. In that view of the matter, even if the injury complained falls within Part II of Schedule I if evidence is adduced to show that such an injury has resulted in permanent total disablement on evidence, it is open to the Commissioner to consider the loss of earning capacity and to hold that notwithstanding what is contained in Part II of Schedule I, the injury in question has resulted in permanent total disablement.

21. But, the question which still remains to be answered is in law what is the position; in law what a permanent total disablement means. For that it is necessary to look into the definition as contained in Section 2(1)(1) of the Act which is extracted above. The words which would signify the intention of the legislature are as under:- "as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement." Interpreting the aforesaid provision in the case of *GENERAL MANAGER OF THE GIP RAILWAY, BOMBAY v. BHANKAR* AIR 1950 NAG 201, it has been held as under:

"But this inability did not imply his inability to do other work. Disablement must be of such a character that the person concerned is unable to do any work. The reasoning of the learned Commissioner has proceeded as if the words were "for the work which he was performing at the time of the accident" in place of the words which I have underlined for all work which he was capable of performing at the time of the accident".

22. Primarily the language employed is the determining factor of intention. The first and primary rule of construction is that the intention of the Legislature must be found from the words used in the Legislation itself. Each word, phrase or sentence is to be construed in the light of general purposes of the Act itself. It is the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy but it is not allowable to interpret when there is no need for interpretation. The language best declares without more the intention of the law giver and is decisive of it. A construction which will leave without effect any part of the language of a statute will normally be rejected. The paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object. The words employed must be given their proper and plain meaning.

23. Now the words employed in Section 2(1) make it clear that in order to

determine the total disablement, whether of a temporary or permanent nature, what is to be seen is whether the injury complained of incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. Therefore, it is clear the question is not whether the workman is incapacitated to do the work which he was doing before the accident. Even though he was doing a particular work if he was capable of performing other work at that point of time, the question is whether after the accident even though he is disabled from performing the work which he was performing before the accident whether he is able to perform the other work which he was capable of performing before the accident. In that view of the matter, it is not possible to accept the contention that once it is shown that the injured is not capable of doing the work which he was performing before the accident, it amounts to total disablement.

24. In fact, a reading of the injuries mentioned in Part II of Schedule I, such as injuries like amputation below middle thigh to 8.89 cms. Below knee, amputation below knee with stump exceeding 8.89 cms. Not exceeding 12.70 cms., amputation below knee with stump exceeding 12.70 cms, amputation of one foot resulting in end bearing, where the percentage of loss of earning capacity has been held to be only between 50 to 60% clearly shows that the intention of the legislature was not to treat those injuries as a case of permanent total disablement because in any of those cases any person who was doing his work with the assistance of legs will not be able to do the work thereafter. Therefore, a driver who has to make use his legs for driving purposes after the said injury will never be able to drive again. If the intention of the legislature was to treat such injury resulting in permanent total disablement they would not have included these injuries in Part II of Schedule I and declare that the loss of earning capacity on account of the said injury is only between 50 to 60% as against 100%. Therefore, the said provision cannot be construed by Courts in such a fashion which would negate the intention of the legislature. But, as held in the aforesaid Siddappa's case even if an injury falls within Part II of Schedule I and the injured is entitled to loss of earning as stipulated in the Schedule it is still open to him to lead independent evidence before the Commissioner and contend that on account of the accident he is prevented from doing any work and in a given case if he is able to demonstrate the said fact it is well within the Jurisdiction of the Commissioner to hold that such an injury notwithstanding what is mentioned in Part II of Schedule I amounts to permanent total disablement and award compensation on the basis of such assessment. As stated earlier, in the aforesaid two Division Bench judgments of this Court, the cases are decided on admitted facts and on facts those judgments are perfectly valid and legal and we do not find any inconsistency between the aforesaid two judgments.

25. In view of the discussions and for the reasons mentioned above, we answer the reference accordingly. We answer the points referred number-wise, which are as under:-

(i) The Commissioner under the Workmen's Compensation Act cannot assess the loss of earning capacity without the assistance of the assessment made by qualified medical practitioner regarding loss of assessment or in disregard of the assessment of a qualified medical practitioner. But, if the assessment made by the qualified medical practitioner is disputed by any one of the parties, the Commissioner is competent to sit in judgment over the assessment of the qualified medical practitioner and pronounce upon the same if material by way of assessment of another qualified medical practitioner is placed and he is accepting the said assessment having regard to the nature and extent of the disablement and the loss of earning capacity, he can disregard the earlier assessment of the medical practitioner disputed by the parties.

(ii) In the event of neither the workman nor his employer producing any medical evidence to show the extent of loss of earning capacity resulting from the injury of the former, Section 11 of the Act empowers the Commissioner to get the injured workman examined at any time by a qualified medical practitioner and to assess the nature and extent of disablement as well as the loss of earning capacity on the basis of such assessment to be furnished by the qualified medical practitioner.

(iii) Determination of the loss of earning capacity has to be with reference to "all the work" which the workman was capable of performing at the time of the accident resulting in such disablement and not with reference to the work which the workman was performing at the time of the accident. However, this is subject to the condition that in case the workman establishes by acceptable evidence that after the injury not only he is not able to do the work which he was performing before the accident but he is not able to do any other work, the loss of earning capacity could be assessed on the basis of such evidence.

(iv) In the case of an injury specified in Part II of Schedule I which falls u/s 4(1)(c)(i) read with Part II Schedule I, the Commissioner has the power to determine the amount of compensation awardable u/s 4(1)(b) of the Act provided the injured by adducing independent and acceptable evidence establishes the case that the injury which he has sustained results in a permanent total disablement and not merely permanent partial disablement.

Accordingly, the questions are answered.