**(2016) 06 KAR CK 0028**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 21592 of 2010 (WC)

Shrikant APPELLANT

Vs

Mahantesh RESPONDENT

**Date of Decision :** 03-06-2016

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 22, 4(1)(c), 4(1)(c)(ii)

**Citation :** (2016) 150 FLR 810

**Hon'ble Judges :** Mrs. Rathnakala, J.

**Bench :** Single Bench

**Advocate :** Naveen B. Chatrad, Advocate, for the Appellant; M.K. Saudagar and Subashgouda, Advocates, for the Respondent

**Final Decision :** Allowed

# Judgement

Mrs. Rathnakala, J.—Though the appeal is listed for admission, with I consent of the learned Counsel on both sides, the same is heard for final disposal.

2. This is an appeal filed by the injured claimant, being aggrieved by the inadequate compensation awarded by the Commissioner for Workmen''s Compensation. The indisputable facts are that the claimant-appellant had suffered injuries i.e., fracture to right and left legs and other injuries on all over his body in the accident that occurred on 6.2.2008, during the course of his employment, while he was working as a driver of the vehicle bearing registration No. KA-25/B-1149 owned by the respondent No. 1. He filed claim petition under section 22 of the Workmen Compensation Act, hereinafter referred to ''the Act'' for short before the Commissioner for Workmen Compensation.

3. The owner and the insurer contested the claim. The Commissioner, on appreciation of the oral and documentary evidence adduced by the parties, assessed the permanent disability sustained by the claimant at 36% and on assessing the income of the injured at Rs. 3,500/- per month computed the compensation of Rs. 1,66,282/- with interest at the rate of 12% per annum

 

payable 30 days after the date of order.

4. Shri. Naveen B. Chatral, the learned Counsel for the appellant-claimant submits that the appellant was working as a driver in the lorry belonging to the 1st respondent and earning a sum of Rs. 5,000/- per month with batta of Rs. 12 per day. The Commissioner, ignoring the evidence placed in this regard has wrongly worked out the compensation by assessing the income of the claimant at Rs. 3,500/- per month under the Minimum Wages Act. That has substantially reduced the amount of compensation. Further, as per the amended provisions of section 4(2) of the Act, the Commissioner would have assessed the income at Rs. 4000/- per month. That apart, he submitted that in view of the Judgment of the Apex Court in the case of Oriental Insurance Co. Ltd., v. Siby George and others, 2012 (134) FLR 1064 (SC). the claimant is entitled for interest commencing from 30 days after the date of accident, which is overlooked by the Commissioner.

5. On the other hand, Shri. M.K. Soudagar, learned Counsel appearing for the 2nd respondent-insurer vehemently submits that no illegality is committed by the Commissioner in assessing the income of the injured-claimant. In the absence of any documentary proof about the exact wages earned by the appellant, under the Minimum Wages Act, his income was assessed at Rs. 3,500/- per month and hence, the appellant is not entitled for further enhancement of compensation. The Commissioner has rightly computed the compensation and it does not calls for interference. However, as regards the payment of interest is concerned, he fairly concedes that the same be paid with effect from 30 days after the accident.

6. In the light of the above submissions of the respective Counsel, the question that arises for my consideration is:

(i) Whether the impugned award calls for interference?

7. Except self serving statement of the claimant-appellant, there is no material to upheld the contention of the claimant-appellant about the quantum of his monthly wages. The Commissioner did not suspect the contention of the Workmen that he was earning Rs. 5000/- per month. However, he has assessed the income at Rs. 3,500/- per month, within the permissible limits of the Payment of Minimum Wages Act, 1948. While doing so, the Commissioner has overlooked the enablement available for him under the provisions of the present Act itself. In case of death or permanent disability, Explanation-II of sub-section (1) of section 4 of the Act contemplates that "where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purpose of computation of compensation shall be deemed to be four thousand rupees only". No such deemed provisions is available in respect of partial permanent disability. The injury suffered by the workman being not a scheduled injury and partial permanent disability, the statutory cap on the quantum of compensation is strictly as per section 4 (1) (c) (ii) of the Workmen''s Compensation Act, 1923,

which reads as under:

"4. Amount of Compensation (1).........

xxx

(a)

(b)

(c)

(i)

(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."

8. The deemed monthly wages contemplated in respect of the cases of a death or permanent disablement, shall be made applicable in respect of the nonscheduled injury/partial injury also, so long the total compensation does exceed the limit of compensation payable in respect of death or total disability. Thus, ''though the income of the workman was found to be at Rs. 5,000/- per month, the deemed income shall be at Rs. 4,000/- per month for the purpose of computing the compensation. Thus, this Court is of the considered view that the Commissioner was not justified in assessing the income of the claimant at Rs. 3,500/- per month, and it should have been Rs. 4,000/- per month. As far as percentage of physical disability is concerned, in view of the fact that insurer has not challenged the Award, the disability assessed at 36% by the Commissioner cannot be disturbed. Thus, the claimant-appellant is entitled to compensation of Rs. 1,90,036/- ( Rs. 4000 x 60-219.95 x 36/100- Rs. 1,90,036/-), as against Rs. 1,66,282/-. Thus the enhanced compensation comes to Rs. 23,754/-.

9. So far as date of commencement of payment of interest on the award amount is concerned, the Apex Court addressed this issue in its Judgment rendered in the case of Oriental Insurance Co. Ltd. v. Siby George and others, 2012 (134) FLR 1064 SC. and negatived the contention of the insurer that the payment of compensation would fall due only after the Commissioner''s Order or with reference to the date on which the claim application is made. Following it? own Judgment in Pratap Narain Singh Deo, 1976 (32) FLR 92 SC : 1975 SCLJ 499. the Apex Court upheld the principles that the insurer is liable to pay the compensation, as soon as the personal injury was caused to the appellant. In that view of the matter, the dock of interest will begin to run from 30 day after the date of accident and not from 30 days after the date of order passed by the Commissioner.

10. In that view of the matter, the appeal is allowed in part. In modification of the impugned Order dated 10.8.2009 passed by the Labour Officer and the Commissioner of Workmen''s Compensation, Dharwad district, Sub-Division-II,

 

Hubli in WCA/NF.No. 48/2008, the compensation payable to the claimant-appellant is enhanced from Rs. 1,66,282/- to Rs. 1,90,036/- (Rupees one lakh ninety thousand thirty six only) with interest at the rate of 12% per annum payable 30 days after the date of accident. The 2nd Respondent insurance company is directed to deposit the enhanced compensation with accrued interest on the entire compensation amount within four weeks from the date of receipt of the certified copy of this Order. Office to transmit the records to the concerned Commissioner forthwith.

11. Draw up the award accordingly.

 