

(2009) 12 AP CK 0064

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 2286 of 2000

Siddabattula Sivannarayana alias Sreemarmarayana alias
Sivarao

APPELLANT

Vs

Chukkapalli Sambasiva Rao and Another

RESPONDENT

Date of Decision : 30-12-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 3, 3(2), 30, 4

Citation : (2011) ACJ 1425 : (2010) 3 ALT 36 : (2010) 125 FLR 1078

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : N. Subba Rao, for the Appellant; B. Devanand and M. Srinivasa Rao
for Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—This is an appeal preferred u/s 30 of the Workmen's Compensation Act, 1923 by the claimant aggrieved by the quantum of compensation awarded by the Commissioner.

2. The claimant was working as driver of a truck owned and belonging to the 1st respondent bearing Regn. No. ABG 7979. The 2nd respondent is the insurer of the said vehicle. The claim has been laid seeking compensation of Rs. 1 lakh for the disability suffered by the appellant due to the accident that had occasioned on 19-6-1991, at about 3 a.m. on Nagavali bridge, while he was bringing a commercial freight of local loaded at Cuttack to be transported to Macherla in Guntur District. In the accident, the cleaner of the truck has died on the spot while the appellant suffered a fracture to his left leg and injuries to his head. The accident was reported at Amudalavalasa Police Station and the appellant was initially admitted to Government Hospital, Srikakulam and therefrom he has been shifted to Government General Hospital at Guntur on 24-6-1991. He underwent treatment for nearly one month and he was operated upon for the fracture, requiring insertion of steel rods for support. He was aged about 30 years at the

time of accident and that he was paid wages of Rs. 1300/- per month with Rs. 10/- per day as batta for every working day apart from being paid 2% of the collected amount for the commercial freight carried. Apart from examining himself, Dr. Vijayabhaskar, an Orthopedic surgeon has been examined as A.W.2. He has also got marked Exs. A-1 to A-16. Ex. A-1 is the copy of the FIR registered by Amudalavalasa Police Station. Ex.A-2 is the statement of the appellant recorded by the said police. Ex. A-3 is the wound certificate while Ex. A-4 is the Motor Vehicle Inspector's check report of the vehicle bearing Regn. No. ABG 7979, Ex. A-5 is the copy of the charge sheet filed by Amudalavalasa police against the appellant on the file of the Judicial First Class Magistrate, Amudalavalasa. Ex. A-6 is the driving licence of the appellant. Ex. A-7 is the OP Chit issued by the Government General Hospital at Guntur. Ex. A-8 to A-15 are the medical bills. Ex. A-16 is again the OP Chit issued by the Government Hospital. Though no witnesses have been examined on behalf of the 2nd respondent - insurance company, the subsisting insurance policy of the vehicle has been got marked as Ex.B-1.

3. The fact that the accident had occasioned during the course of employment on 19-6-1991 is held established. It is also further established that the appellant had been admitted to the Government District Headquarters Hospital at Srikakulam on 19-6-1991 and subsequently he has been shifted to the Government General Hospital at Guntur on 24-6-1991 and that he remained as an inpatient there till 23-7-1991. He was operated upon on 3-7-1991. He was once again admitted and operated upon on 9-12-1992 for removing the nail which has been inserted earlier. A.W.2 who is a qualified Orthopedic Surgeon has been examined on 16-8-1993 before the Commissioner. The doctor has deposed that the patient was approximately 35 years old and fracture of the shaft of the left femur, though healed and united well, has resulted, however, in limitation of rotation of the left hip joint. The doctor has also found that the terminal degrees of rotations of the left hip are painful. He has therefore certified that 30% partial and permanent disability to have been suffered by the patient. The Doctor has opined that he will not be able to drive a truck again. Therefore, the entitlement for payment of compensation is the only question which requires to be considered.

4. The Commissioner has, therefore to determine the extent of disablement suffered by the workman and the resultant compensation payable to the appellant/workman. The statement of the appellant that he was earning Rs. 1,300/- per month as wages was not believed, for, he has not produced any documentary evidence in that regard. Therefore, the minimum wage fixed by the State Government through its GO Ms. No. 71, dated 13-9-1991 for a heavy vehicle driver at Rs. 1,215/- per month has been taken as a guiding factor. This far there is no difficulty. In the absence of any credible documentary evidence in the form of wage register to show that the appellant was paid exclusively wages of Rs. 1,300/-, the safe measure is to fall back upon the minimum wages fixed by the State Government/District Collector concerned. But, however, what the

Commissioner did was he has confined the quantum of wages for purposes of reckoning the compensation to Rs. 1,000/-. Unfortunately the Commissioner does not appear to have noticed that by amending Act 22/1994, which was brought into force with effect from 1-7-1984, the words "on monthly wages not exceeding Rs. 1,000/-"are deleted from the definition of workman, found in Section 2(1)(n) of the Workmen's Compensation Act. Therefore, with effect from 1-7-1984 onwards, there is no limit with regard to the quantum of monthly wages liable to be earned for treating one to be a workman, to enable him seek compensation under Workmen's Compensation Act.

5. Section 3 of the Act imposed a liability for payment of compensation, on every employer, if a personal injury is caused to a workman due to an accident arising out of and in the course of his employment. There is no material that has been brought on record to establish that the liability to pay compensation does not arise in view of the circumstances as enumerated in the proviso to the said Section 3. Therefore, the liability to pay compensation by the employer to the claimant/appellant is absolute in this case, for, the accident had occasioned in course of his employment while the appellant was carrying commercial freight of coal from Cuttack in Orissa State to Macherla in Guntur District of Andhra Pradesh and the accident had occasioned enroute at Amudalavalasa bridge.

6. A.W.2, the Doctor who is an expert Orthopaedic surgeon has deposed that the appellant had no doubt suffered 30% partial and permanent disability, because of the limitation of rotations of the left hip joint. He has further stated that the appellant will not be able to drive a truck again. On that basis, the Commissioner has calculated and computed the amount of compensation to be Rs. 29,559/-. Since the doctor has also opined the age of the appellant to be 35 years, in terms of relevant entry in Schedule IV of the Act, factor 197.06 has been taken into reckoning. Compensation has been worked out by dividing Rs. 1000/- by two and then multiplying it with 30% and multiplying it with 197.06.

7. While computing the compensation, has the Commissioner acted strictly in accordance with Section 4 of the Act or not, is the question to be determined.

8. Section 4 attempted to quantify the amount of compensation payable on a structured format basis where permanent total disablement results from the injury and at the relevant point of time, an amount equal to sixty percent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 60,000/-whichever is more is provided for as compensation. Therefore, the learned Counsel for the appellant Sri Subba Rao contended that the Tribunal has committed an error in taking into account and consideration literally the fact that A.W.2 Doctor has certified the appellant to have suffered a permanent partial disablement of 30% only. What the Commissioner should have taken into consideration and account is that this 30% partial and permanent disability had fructified into a permanent total disablement insofar as the appellant is concerned in as much as he can no longer driver a heavy motor vehicle for his livelihood. Learned Counsel has placed reliance upon the definition

of the expression "total disablement" found in Section 2(1) of the Act which reads as under:

2(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 the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity as specified in that schedule against those injuries, amounts to one hundred per cent:

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 percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.

According to the learned Counsel, in case a temporary disablement incapacitates a workman from rendering work which he is capable of performing at the time of the accident, it amounts to total disablement. The learned Counsel therefore contends that the avocation or the work which the appellant was performing at the time of the accident is liable to be taken into consideration and account. If the injury sustained renders the workman incapable of undertaking such a work, then he shall be treated to have suffered total disablement. He placed reliance upon the judgments in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, ; *National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another*, , *New India Assurance Company Ltd. v. Kotam Appa Rao* (3) 1995 (3) ALD 1108 and *Hanumantha Gowda Vs. Devaraju*, .

9. Learned Counsel for the insurance company Sri M. Srinivasa Rao has contended that the computation of compensation has been made properly and fairly by the Commissioner. The appellant having suffered only 30% permanent partial disablement, he cannot consider himself to have become permanently disabled to seek higher quantum of compensation. Learned Counsel points out that the distinction between total disablement and partial disablement should not be lost out. He had placed reliance upon the judgments in *General Manager, G.I.P. Ry. v. Shankar* (5) AIR 1950 Nag 201, *Amar Nath Singh Vs. Continental Constructions Ltd.*, , *New India Assurance Company Limited Vs. T. Narasimha Murthy Raju and Another*,

10. For the purpose of regulating the payment of compensation for injuries sustained by workmen accidentally during the course of employment, the Workmen's Compensation Act, 1923 has been enacted. Section 3 has thrust an obligation to pay compensation on every employer, for personal injuries sustained by workmen accidentally arising out of and in the course of employment. Sub-section (2) of Section 3 also specified that if workman

employed in any employment specified in Parts A, B and C of Schedule III contract occupational such diseases, which are peculiar to that particular employment, the same shall be deemed to be an injury by accident for the purposes of Section 3. Section 4 dealt with the issue of fixation of the amount of compensation where, either death, permanent total disablement, permanent partial disablement and temporary disablement results from injuries arising out of the employment. Section 2(g) defined the expression "partial disablement" as under:

2(g) "partial disablement" means, where the disablement is of a temporary nature, such disablements 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.

11. Section 2(1) defined the expression "total disablement" in the following words:

2(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 percentage of the loss of earning capacity, as specified in the said part II against those injuries, amounts to one hundred per cent or more;

12. Therefore, if a workman is staking a claim for payment of compensation in terms of Section 4, the injury must result in either in his death or permanent total disablement or permanent partial disablement or temporary disablement, whether total or partial. The amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor or an amount of ninety thousand rupees, whichever is more, becomes payable for injuries resulting in permanent total disablement. Insofar as permanent partial disablement, the quantum of compensation is liable to be determined as under:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation, which would have been payable in the case of permanent total disablement as is specified therein as being the percentage 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 is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the

injury;

13. In the instant case, the accident did arise during the course of employment as the workman was bringing commercial freight of coal from Cuttack. That far there is no difficulty. But, however, the Commissioner has rejected to award compensation treating the injury as causing permanent total disability. On the other hand, he considered the same as permanent partial disablement. Whether the injury would amount to total permanent disablement or permanent partial disablement, would dependant upon the nature of injury and the degree of the disablement sustained in that process. The essential distinction between "partial disablement and total disablement" is this:

In the case of "partial disablement", the disablement is of such a nature that it would reduce the earning capacity of the workman in the employment in which he was engaged at the time of the accident and where the disablement is of a permanent nature, such disablement reduces his earning capacity in every other employment which he was capable of undertaking at that time. Further, the statute specified that every such injury specified in Part II of Schedule, shall be deemed to have resulted in permanent partial disablement. When it comes to "total disablement" such disablement could be of a permanent nature, but it must also incapacitate the workman from all work which he was capable of performing at the time of the accident resulting in such disablement. All such injuries specified in Part I of the Schedule I shall be deemed to result in "total disablement". The distinction therefore lies in the incapacity of the workman for all work which he was capable of performing at the time of the accident, that renders the injury to be treated as "total disablement". In "partial disablement" cases, the disablement merely reduces his earning capacity. In other words, the workman can still be capable of doing some work, and earn something less than what he was earning prior to the accident, but may not necessarily be the same work which he was performing. If this distinction is borne in mind, the rational approach in classifying the injuries in Part A and Part B of Schedule I in enactment would become clear.

14. Learned Counsel for the appellant Sri Subba Rao has placed strong reliance upon the judgment rendered by the Supreme Court in Pratap Narain Singh Deo v. Srinivas Sabata (1 supra). It will be relevant to notice that that in that case, the respondent -workman was working as a carpenter for doing some ornamental work in a cinema hall owned by the appellant therein. On 6-7-1968, when he fell down and suffered injuries resulting in the amputation of his left arm at elbow, that gave rise to the claim for payment of compensation under the Act.

The Commissioner in his order dated May 6th, 1969 held that the injury which resulted in amputation of the left arm rendered the workman unfit for the work of carpenters as the work of carpenter cannot be done by one hand only and on that basis found that the workmen had lost 100% of his earning capacity. It has been urged by the appellant before the Supreme Court that the injury sustained

by the workman did not result in permanent total disablement and that the Commissioner committed a gross error of law in taking such a view as there was only "partial disablement" within the meaning of Section 2(1)(g) of the Act. After noticing the finding recorded by the Commissioner for Workmen's Compensation, the Supreme Court has concluded the issue in the following words:

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 arcomin to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.

15. In fact, in a subsequent decision in *Amar Nath Singh v. Continental Constructions Ltd.*, New Delhi (6 supra), it was suggested that the decision in *Pratap Narain Singh Deo's* case (1 supra), turned on its own facts and therefore the principle therein cannot be extended to all cases.

16. As is well known, the ratio laid down by the Supreme Court is what carries with it the weight of a binding precedent. It is well settled that an order of the Supreme Court must be construed having regard to the text and context in which the same was passed. A judgment cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. More important is to see the issue involved therein and the context wherein the observations were made. Any observation made in a judgment should not be read in isolation and out of context. (See *Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others*, . A decision is a precedent on its own facts. Each case presents its own features. It is not everything said in the judgment that constitutes a precedent. The only thing in a decision binding is the principle upon which a case is decided and for this reason it is important to analyse a decision and to isolate from it the ratio decidendi. Every decision contains three basic postulates. (i) findings of material facts, direct and inferential, (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effects of the above. A decision is an authority for what is actually decides. What is of essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent.

17. In *Pratap Narain Singh Deo's* case (1 supra), in my humble opinion, the Supreme Court has not laid down any ratio to hold that, if a workman all due to an accident, has lost his earning capacity to perform only such work which he was doing at the time of such an accident, such injury arising out of such an

accident must be treated as causing permanent total disablement to the workman. In my humble opinion, in Pratap Narain Singh Deo's case (1 supra), the Supreme Court has found that the view taken by the Commissioner for Workmen's Compensation to be a reasonable view and not a perverse or totally conclusion and hence the Supreme Court had not preferred to upset such a reasonable unjust conclusion. Therefore, Pratap Narain Singh Deo's case (1 supra) cannot be construed as laying down as a ratio, that if a workman has lost his earning capacity because of the disablement sustained by him in an accident arising out of employment, to perform those very nature of duties which are performed by him at the time of such accident, that such an injury should be construed as resulting in permanent total disablement. The Statute has advisedly pointed out a valid distinction between "permanent disablement" and "permanent partial disablement". Until and unless a workman is rendered incapacitated from performing any other work as well, he cannot be treated to have sustained "permanent total disablement". In other words, if the workman is capable of performing any other work, other than the one, which he was performing at the time of sustaining the disability, then he cannot be construed to have suffered "permanent disablement". In fact, a Division Bench of the Kerala High Court in Marthemotheous Birth Centenary Press v. Santhosh Raj (8) 2001 ACJ 1085 has concluded this issue in the following words:

(9) The submission of the counsel is well founded when it is contended that the commissioner has committed an error in the assessment of compensation. It is eviablyment for such injuries in the nature of loss of both eyes, loss of hand and foot, double amputation through leg, etc. Amputation from 20. 32 cm. from tip of acomion to less than 11.43 cm. below tip of olecranon (item 3, Part II of Schedule 1) warrants assessment of loss of earning capacity at 70 per cent.

In the above background, we are of opinion that assessing 80 per cent disability for loss of three fingers (thumb is intact) is not permitted by the statute, be it a welfare legislation. The Commissioner is also not entitled to take note of the age of the applicant in that context as specific parameters have already been laid down. Compensation is determinable on the basis of index factors supplied by Section 4 of the Act. It may be relevant to point out that the above provisions were brought into the statute by amendment made on 1-7-1984. No person can assert or take shelter under a contention that he is prepared to do only one type of work and by the accident if he becomes unable to do the work ever thereafter, he is to be given 100 per cent compensation. The proceedings permit an enquiry as to whether the victim was capable for doing the works that he was able to do at the time of accident. That he was engaged in a specific work at the time of accident does not mean that at the relevant time he was not capable of attending to a hundred different avocations, if he had the inclination to do them. The larger question to be borne in mind by the Commissioner is as to whether a person by the accident became unwillingly a burden to the community one hundred per cent. Of course, the applicant, after the accident will not be able to compete with another, who is 100 per cent fit. The loss of three fingers will adversely affect

him. But so long as the law prescribes it as 30 per cent, the Commissioner has no further discretion in the matter. His discretion, we would generally observe, could be applied when he fixes compensation for the nonscheduled injuries, and then he has also the duty to get assistance from the medical practitioners, who are to examine the nature and extent of the injury and disability. The approach has to be realistic and never arbitrary.

18. I am in respectful agreement with the reasoning assigned by the Division Bench of the Kerala High Court in the aforesaid case. I am therefore not in a position to agree with the contention of the learned Counsel for the appellant-workman to hold that he has sustained "permanent total disablement" from out of the accident sustained during the course of employment as he is no longer capable of driving a truck. In my opinion, the disability sustained by the workman is only a "permanent partial disablement" inasmuch as he is still capable of performing some other nature of duties to earn for a living and they may not necessary be involving driving of motor vehicles. For these reasons, I conclude the issue by holding that the appellant has only sustained permanent partial disablement and not permanent total disablement.

19. But still, the learned Counsel for the appellant is right in his criticism that the quantum of compensation has been wrongly computed. It should have been calculated in accordance with Section 4(1)(c)(ii). In such a case, it would result as under:

Rs. 1215 x 60/100 x 30/100 x 197.06 = Rs. 43,097.022 - Say Rs. 43,100/-.

20. Hence, this amount is what is liable to be paid to the appellant. CMA is allowed in part. No costs.