
(2011) 08 MP CK 0077

In the Madhya Pradesh High Court

Case No : Miscellaneous A. No. 317 of 2010

Suresh

APPELLANT

Vs

Abdus Salim Sheikh and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Citation : (2011) 131 FLR 582 : (2012) LLR 74

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Mukesh Kumawat, for the Appellant; Abhay Jain with Mrs. Priti Saxena, for the Respondent

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 14.11.2010 passed by Commissioner Workmen's Compensation. Labour Court, Indore in WCMF case No. 43/2008 whereby the claim petition filed by appellant for compensation on account of injuries was allowed and a sum of Rs. 1,52,489.00 was awarded as compensation along with interest @ 12% per. annum w.e.f. 2.7.2008, present appeal has been filed.

2. Short facts of the cast are that the appellant filed a claim petition under the Provisions of Workmen's Compensation Act, before the Labour Court alleging that appellant is a mason and was In the employment of respondent No. 1. It was alleged that appellant was getting Rs. 4000.00 per month. It was alleged that on 23.3.2008, when appellant was doing his job, at the relevant time, the wall fell down as a result of which the appellant sustained crush injuries in his right hand, he was hospitalized at Bhandari Hospital, Indore where his right hand was operated. It was alleged that since respondent No. 1 was insurer of respondent No. 2, therefore, compensation be awarded. Claim petition was contested by respondent No. 1. It was alleged that since respondent No. 1 insured, therefore, the responsibility comes to the respondent No. 2 for payment of compensation. Respondent No. 2 filed the reply wherein it was denied that respondent No. 2 is responsible for payment of compensation. It was alleged that

no intimation of the Occident was given by the respondent No. 1. It was prayed that claim petitioner dismissed.

3. After framing of issues and recording of evidence, learned Court below allowed the claim petition assessing the income of the appellant as Rs. 4000.00 per month and awarded a sum of Rs. 1,52,489.00 along with interest @ 12% per annum w.e.f. 2.7.2008 after taking 60% wages as per act and after multiplying 30% permanent disability with the relevant factor against which present appeal has been filed.

4. Learned Counsel for the appellant argued at length and submits that the amount awarded by the learned Commissioner is on lower side. It is submitted that since the appellant was mason by profession, therefore, permanent disability ought to have been assessed to the extent of 100% instead of 30% as assessed by the learned Court below.

5. Learned Counsel placed reliance on a decision in the matter of National Insurance Co. Ltd. Vs. Mohd. Saleem Khan and Another, wherein injured workman sustained permanent physical impairment resulting in loss of physical function of 50 per cent, and he was not fit to drive any heavy vehicle. Andhra Pradesh High Court held that since workman was employed as a heavy vehicle drive therefore, the workman is entitled to compensation on the basis of permanent total disablement. In the matter of Pratap Narain Singh Deo v. Shrinivas Sabata and another, 1976 ACJ 141, wherein a carpenter while doing work in the course of employment fell down and sustained injuries, as a result his left arm above elbow was amputated, Hon''ble Court has held that the workman became unfit for the work of a carpenter. It was further held that the disablement is total and not partial as the work of carpentry cannot be done by one hand only. In the matter of K. Janardhan v. United India Insurance Co. Ltd., 2008 ACJ 2019, wherein tanker driver suffered amputation of right leg up to knee joint and the doctor opined disability at 65%, the Commissioner allowed compensation at 100% loss of earning capacity. High Court found that as per schedule I, amputation of leg amounted to 60% loss in earning capacity and reduced the compensation accordingly, the question arose whether the tanker driver who has suffered amputation of right leg from knee has suffered total disablement and 100% loss in his earning capacity and Hon''ble Apex Court has held that he is even disqualified from getting a driving licence.

6. On the strength of aforesaid position of law, learned Counsel submits that the impugned order is illegal, whereby compensation has been awarded assessing 30% permanent disability. Learned Counsel submits that appeal be allowed and compensation be awarded holding that appellant is entitled for compensation on the basis of 100% permanent disability.

7. Mr. Abhay Jain, and Mrs. Priti Saxena. Advocates, on behalf of respondent No. 2 submits that the amount awarded is just and proper which requires no interference.

8. From perusal of record, it is evident that to prove the case appellant has filed documents Ex. P/1 to P/46 which show details of injuries sustained by the appellant. Ex. P/3 to P/5 are the photographs which demonstrate pictures of grievous injuries sustained by the appellant. Since the appellant is labourer, therefore, keeping in view the aforesaid position of law and the condition of the appellant this Court is of the view that appellant sustained loss of earning capacity to the extent of 80%.

9. Income of the appellant is taken into consideration by the learned Court below as Rs. 4,000 per month of which 60% comes to Rs. 2,400 after multiplying the same with the disability @ 80% and also after multiplying with the factor 211.79, this Court is of the view that appellant is entitled for a sum of Rs. 4,06,636 instead of Rs. 1,52,489 as awarded by the learned Court below. Thus, there is enhancement of Rs. 2,54,147. Amount awarded shall carry interest @ 7.5% P.A. from the date of accident and @ 12% P.A. after lapse of 30 days from the date of adjudication. The amount awarded shall be deposited by the Insurance Company with the learned Court below and the learned Court below is directed to invest 80% of the said amount on long term fixed deposit in the name of appellant in the nearest Nationalized Bank, in the area where the appellant is residing, with the condition that the bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. Account of appellant, which shall be opened by the appellant from where appellant can withdraw the amount as per his needs. However, on an application by the appellant this condition can be modified by the learned Court below in exceptional circumstances, if made out by the appellant.

10. With the aforesaid observations, appeal stands disposed of. No order as to costs.