(2014) 03 KL CK 0006

In the High Court Of Kerala

Case No : MFA No. 277 of 2009

The National Insurance Co. Ltd.	APPELLANT
Vs	
Padmanabhan Karintha and The Managing Director, Kerala State Road Transport Corporation	RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:
Employees Compensation Act, 1923 — Section 22 4(1)(c) 4(1)(c)(ii)

Citation : (2014) 03 KL CK 0006

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : George Cherian Thiruvalla, for the Appellant; N. Unnikrishnan, R1 and Sri. Babu Joseph, R2, for the Respondent

Final Decision : Partly Allowed

Judgement

K.M. Joseph, J.—Appellant is the 2nd opposite party/insurer in a proceedings u/s 22 of the Employees'' Compensation Act, for short, the ''Act''. The 1st respondent in the appeal was the applicant. He suffered injuries while he was working as a driver. The Commissioner has ordered payment of compensation of a sum of Rs. 3,31,238/- with 12% interest from the date of accident. Feeling aggrieved, appellant has filed this appeal. We heard the learned senior counsel for the appellant and the learned counsel for the 1st respondent.

2. Learned senior counsel would point out that the Commissioner has acted legally in computing compensation by taking the loss of earning capacity as 80%. The Commissioner has in fact arrived at the following formula:--

3. Learned counsel would point out that the computation is contrary to the dictum laid down by the Full Bench of this Court reported in Vanajakshan Vs. Joseph, According to him, it is a case u/s 4(1)(c) of the Employees'' Compensation Act. The reduction in earning capacity must be with reference to all the jobs he was capable of doing. In this case, there is no dispute that even

though there was an accident and 1st respondent suffered injuries, the 1st respondent was accommodated in a lower post (as store issuer). He points out that therefore appellant is only entitled to the difference, meaning thereby that the amount arrived at on the basis of the certificate showing the loss of earning capacity must be reduced by the amount which he was drawing in the alternate employment he was provided with. In this connection, learned senior counsel also draws our attention to the decision of the Apex Court in Palraj Vs. The Divisional Controller, NEKRTC,

4. Learned counsel for the 1st respondent, on the other hand, would submit that no interference is called for. He would also drew our attention to the judgment of this Court reported in Kerala Minerals and Metals Ltd. Vs. Raman Nair, In that case, considering the claim for Rs. 45,927/- from the workman, who was accommodated by the management despite the injury, the management contended before the Division Bench that there was no loss of earning power. The Division Bench answered the question as follows:--

Coming to the scope of Section 4(1)(c)(ii) of the Act, we are of the view that the loss of earning power should not be confined only to the present capacity because it is contended by the management that at the same salary the workman is continued in employment. That will be only begging the question. If this were to be the law, the employer can easily evade the provisions of the Act by continuing the employment of the same terms as was enjoyed by the workman prior to the accident. Added to this, should the management wind up its business, the workman will be in the lurch because no person with his eyes open will give employment to a person who had suffered an injury of this kind. Therefore, this is clearly a case to which Section 4(1)(c)(ii) of the Act would apply.

5. We also perused the actual certificate given by the medical practitioner, which is marked as Ext. X1. We notice from the certificate that actually the certificate shows the loss of earning capacity of the 1st respondent as a heavy duty driver. This means there is no assessment as such of all work he was capable of doing and the loss of earning capacity of the callings he could pursue at the time of accident as understood by the decision of the Full Bench. The learned counsel for the 1st respondent also drew our attention to the fact that from the alternate employment he was provided with by the KSRTC in which he was the driver, he was drawing a total pension of Rs. 4,476/-.

6. This is a case of claim on the basis of permanent partial disablement. That has to be decided with reference to Section 4(1)(c) of the Act. Section 4(1)(c) of the Act provides for compensation with reference to the percentage of permanent disability to be assessed on the basis of the medical certificate. There is a medical certificate certifying the loss of earning capacity at 80%. But the loss of earning capacity has been arrived on the basis of the loss assessed for the job of driver which the applicant was pursuing at the time of accident alone. There is no reference to the loss of earning capacity from other callings. In this case, there is

another factor namely that the applicant was provided with alternate employment by his employer as "store issuer". According to the learned counsel for the appellant, there is no evidence whether the amount of salary he was drawing was less than the salary as driver. Any way, we are not going into the said question as we do not rest our decision on the said basis. We notice that there is employment after the injury. There is a reduction in the loss of earning capacity. We notice that Ext. X1 does not refer to all the employments which he could pursue. Having regard to the totality of the circumstances, we think we could fix the loss of earning capacity as 60% in the place of 80%. In such circumstances, we order as follows:--

(1) The loss of earning capacity will stand reduced to 60% in the place of 80%. On the basis of such computation, the 1st respondent will be entitled to a sum of Rs. 2,48,429/- with 12% interest as already ordered. The order of the Commissioner will stand modified to the above extent.

(ii) The 1st respondent is directed to deposit the balance amount within a period of one month from today.

Appeal is partly allowed.

