
(1956) 11 P&H CK 0002
In the Punjab And Haryana At Chandigarh

Union of India (UOI)

APPELLANT

Vs

Babu Lal

RESPONDENT

Date of Decision : 20-11-1956

Acts Referred:

Employees Compensation Act, 1923 — Section 11, 22, 30

Citation : (1957) 1 LLJ 544

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Judgement

Mehar Singh, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 (Act VIII of 1923), arises out of an application by Babu Lal, respondent, u/s 22 of the Act for compensation for permanent partial disablement of the fore-part of his right hand near the wrist.

2. The respondent was employed as a fitter in the Loco Shed of Northern Railway at Ambala Cantonment Railway Station. On 6 March 1955, he was handling a sand box for repairs and as the box was being lowered, the rope sustaining it snapped, and the box fell on the respondent causing fracture of the forearm of his right hand. The respondent was under the treatment of the Divisional Medical Officer of the Northern Railway, Dr. L.N. Suri. On 12 March 1955, this doctor put the forearm and the wrist of the respondent in plaster of paris and this was done under ether anaesthesia. Later when the injury was X-rayed, some defect was still found and the doctor ordered an operation on the following day, that is, 13 March 1955. The respondent refused to undergo the operation and was discharged from the hospital on 14 March 1955. He then came under the treatment of Dr. B.N. Bhatia, a private medical practitioner in Ambala Cantonment. He was under his treatment for six months from March to 29 September 1955. In spite of the treatment by Dr. B.N. Bhatia, the hand of the respondent was not completely cured and this doctor says that he cannot work as a fitter any longer. These facts are not disputed by either side. Dr. L.N. Suri is of the opinion that the percentage of injury in the working capacity of the

respondent is 30 per cent, and Dr. B.N. Bhatia says that it is 50 per cent. The Commissioner has accepted the opinion of the latter doctor and I am not prepared to differ from him in this respect.

3. The learned Counsel for the appellant, the Union of India, contends, with inference to Sub-section (6) of Section 11 of the Act that the respondent, after refusing to be treated by the medical practitioner of the employer has not been regularly attended by a qualified medical practitioner. Dr. L.N. Suri, the medical practitioner of the employer in this case, is said to be a specialist in bone-setting, whereas Dr. B.N. Bhatia admits that, though he is a general medical practitioner, he is not a specialist in bone-setting. The learned Counsel for the appellant urges that the words "regularly attended by a qualified medical practitioner" in the said sub-section mean attended by a medical practitioner specialized in treating the type of injury that is subject-matter of the dispute. Sub-section (6) of Section 11 of the Act reads:

Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workmen had been regularly attended by a qualified medical practitioner, whose instructions he had followed and compensation, if any, shall be payable accordingly.

Now, it is at once clear that the use of the words "regularly attended by a qualified medical practitioner" in the middle of this subsection refer not to a specialist or a specially qualified medical practitioner but to an ordinary qualified medical practitioner and Dr. B.N. Bhatia is a qualified medical practitioner within the meaning of those words. This doctor has stated that the respondent followed his instructions during his treatment of him and also afterwards. So that the respondent has fulfilled all the conditions for the application of Sub-section (6) of Section 11 of the Act to his case and in his case it has been proved that he has been regularly attended by a qualified medical practitioner. Thus the respondent is entitled to compensation as he has been duly treated by a qualified medical practitioner throughout as envisaged by Section 11 of the Act. So that this contention is without substance.

4. The only other argument that has been addressed by the learned Counsel for the appellant is that the doctors of the parties differ as regards the percentage of injury in the working capacity of the respondent, but I have already said that the Commissioner has accepted the opinion of the doctor produced by the respondent and I see no reason at all to differ from the Commissioner in this

behalf. The Commissioner has correctly calculated the amount of compensation at Rs. 1,470 having regard to the percentage of injury in the working capacity of the respondent that he has accepted.

In consequence, the appeal fails and is dismissed with costs.