
(1969) 10 AHC CK 0007
In the Allahabad High Court
Case No : F.A.F.O. No. 56 of 1967

Upper India Sugar Mills Ltd.

APPELLANT

Vs

Kartara

RESPONDENT

Date of Decision : 29-10-1969

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (1970) ACJ 79

Hon'ble Judges : J.S.K. Verma, J

Bench : Single Bench

Advocate : K.C. Aggarwal, for the Appellant; N.C. Upadhaya, for the Respondent

Final Decision : Allowed

Judgement

J.S.K. Verma, J.—This is an employer's appeal u/s 30 of the Workmen's Compensation Act.

2. It cannot be disputed that on 15th July, 1964, the Respondent, Kartara, suffered an injury in the course of his employment because of which he suffered a certain amount of physical incapacity in his right wrist and fingers. According to Dr. B.S. Darbari, the disability was partial and the loss, in his opinion, was to the extent of 15%. The learned Workmen's Compensation Commissioner relying upon the testimony of Dr. Darbari awarded the workman compensation on the basis of 15% loss of earning capacity. This, in my view, is not correct. In the first place, the doctor may be able to estimate the percentage of loss of physical capacity but that will not necessarily be equivalent to loss of earning capacity. There may be cases in which physical incapacity is suffered but without any loss of earning capacity. In such a case the workman will not- be entitled to any compensation. The evidence in the present case shows that, far from suffering loss in earning capacity, the Respondent is earning more. His salary was Rs. 98/- per month before the accident. After the accident, it was raised to Rs. 118/- per month, which was again increased to Rs. 126/- per month. At present, therefore, there is no evidence of loss of earning capacity.

3. The learned Counsel for. the Respondent has strenuously contended that the employer may show generosity at present but subsequently may change his mind and throw him out, and because of the physical incapacity that he has suffered, he may not be able to seek employment at all, or on smaller wages. To guard against this possibility, I propose to do what was done in an English case King v. Port of London Authority 1920 A.C. 1, and to make a "suspensory award."

4. I allow this appeal, and set aside the order of the learned Workmen's Compensation Commissioner. The liability of the Appellant to pay compensation to the Respondent is hereby declared. It will be enforced only when the Respondent can prove that his earning capacity has diminished and gives evidence of the percentage of diminution. Parties will bear their own costs.