

K. JANARDHAN

v.

UNITED INDIA INSURANCE CO. LTD. & ANR.
(Civil Appeal No.5831 Of 2002)

MAY 9, 2008

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Workmen's Compensation Act – s.2(1)(e) – Compensation – For disablement incapacitating the victim for work which he was capable of performing at the time of accident – Appellant, tanker driver, met with accident – His right leg amputated from the knee – Appellant was 30 years of age at the time of accident and earning Rs.2000/- per month – Claim for compensation – Held: Appellant suffered 100% disability and incapacity in earning his keep as a tanker driver – He became disqualified from even getting a driving licence – In facts and circumstances of the case, the Commissioner for Workmen's Compensation was right in determining the compensation payable to Appellant at Rs.2.5 lakhs with interest @ 12% p.a. from the date of accident – Motor Vehicles Act, 1988 – ss.8 and 9.

Appellant, a tanker driver, while driving his vehicle met with an accident with a tractor coming from the opposite side. As a result, the Appellant suffered serious injuries and also an amputation of the right leg up to the knee joint. He thereupon moved an application before the Commissioner for Workmen's Compensation praying for grant of Rs. 5 lakhs by way of compensation. The Commissioner observed that the claimant was 30 years of age and determined his salary at Rs. 2000/- per month. The Commissioner also found that as the claimant had suffered an amputation of his right leg up to the knee, he had suffered a loss of 100% of his earning capacity as a driver and accordingly determined the compensation payable

A to him at about Rs. 2.50 lakhs with interest @ 12% p.a. from the date of the accident. An appeal was thereafter taken to the High Court by the Respondent-Insurance Company. The High Court accepted the plea raised in appeal that as per the Schedule to the Workmen's Compensation Act, the loss of a leg on amputation amounted to a 60% reduction in the earning capacity and as the doctor had opined to a 65% disability, this figure was to be accepted and accordingly reduced the compensation to about Rs.1.62 lakhs.

C In appeal to this Court, the contention raised by Appellant is that he being a tanker driver, the loss of his right leg *ipso facto* meant a total disablement as understood in terms of Section 2(1)(e) of the Workmen's Compensation Act and as such he was entitled to have his compensation computed on that basis.

D Allowing the appeal, the Court

E HELD: 1. The Appellant suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg had been amputated from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act 1988 would show that the Appellant would now be disqualified from even getting a driving licence. [Para 5] [161-C,D]

F 1.2. The judgment of the High Court is set aside and that of the Commissioner restored. [Para 6] [161-D]

Pratap Narain Singh Deo vs. Srinivas Sabata & Anr. (1976) 1 SCC 289 – relied on.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5831 of 2002

From the final Judgment and Order dated 6.10.2001 of the High Court of Karnataka at Bangalore in MFA No. 484 of 2000

H R.S. Hegde, Chandra Prakash, Ashwani Garg and P.P. Singh for the Appellant.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J.1. This appeal is directed against the judgment and order dated 6th October, 2001 of the learned Single Judge of the Karnataka High Court whereby compensation of Rs.2,49,576/- awarded by the Commissioner for Workmen's Compensation has been reduced to Rs.1,62,224.40/-. It arises from the following facts.

2. The claimant- appellant a tanker driver, while driving his vehicle from Ayanoor towards Shimoga met with an accident with a tractor coming from the opposite side. As a result of the accident, the appellant suffered serious injuries and also an amputation of the right leg up to the knee joint. He thereupon moved an application before the Commissioner for Workmen's Compensation praying that as he was 25 years of age and earning Rs. 3,000/- per month and had suffered 100% disability, he was entitled to a sum of Rs. 5 lac by way of compensation. The Commissioner in his order dated 18th November, 1999 observed that the claimant was 30 years of age and the salary as claimed by him was on the higher side and accordingly determined the same at Rs. 2000/- per month. The Commissioner also found that as the claimant had suffered an amputation of his right leg up to the knee, he was said to have suffered a loss of 100% of his earning capacity as a driver and accordingly determined the compensation payable to him at Rs. 2,49,576/- and interest @ 12% p.a. thereon from the date of the accident. An appeal was thereafter taken to the High Court by the Insurance Company – respondent. The High Court accepted the plea raised in appeal that as per the Schedule to the Workmen's Compensation Act, the loss of a leg on amputation amounted to a 60% reduction in the earning capacity and as the doctor had opined to a 65% disability, this figure was to be accepted and accordingly reduced the compensation as already mentioned above. It is in this circumstance, that the aggrieved claimant has come up to this court.

3. The learned counsel for the appellant has raised only

A one argument during the course of the hearing . He has submitted that the claimant – appellant being a tanker driver, the loss of his right leg ipso facto meant a total disablement as understood in terms of Section 2(1)(e) of the Workmen’s Compensation Act and as such the appellant was entitled to have his
B compensation computed on that basis. In support of this plea, the learned counsel has placed reliance on *Pratap Narain Singh Deo vs. Srinivas Sabata & Anr.* (1976) 1 SCC 289. The cited case pertained to a carpenter who had suffered an amputation of his left arm from the elbow and this court held that this
C amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under:

D 4. The expression “total disablement” has been defined in Section 2(1)(e) of the Act as follows:

E “(1) ‘total disablement’ means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.”

F It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

G “The injured workman in this case is carpenter by profession By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only.”

H 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 1, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4 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.

5. Applying the ratio of the cited judgment to the facts of the present case we are of the opinion that the appellant herein has also suffered a 100% disability and incapacity in earning his keep as a tanker driver as his right leg had been amputated from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act 1988 would show that the appellant would now be disqualified from even getting a driving licence.

6. We therefore allow this appeal, set aside the judgment of the High Court and restore that of the Commissioner but with no order as to costs.

B.B.B.

Appeal allowed. E