

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Case: CIMA No. 119/2009 CMA No. 168/2009

Date of order: 06.06.2012

Divisional Manager v. Mohd. Hanief and anr.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

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| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
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Appearing counsel:

For petitioner(s) : Mr. Vipin Gandotra, Advocate

For respondent(s): Mr. P. N. Bhat, Advocate

(Oral)

Following substantial question of law is involved in this case:

“Whether in absence of evidence of the medical expert viz. doctor about the loss of earning capacity suffered by the workman having suffered permanent total disablement because of the accident which he met during the course of his employment, the Authority under the Workmen’s Compensation Act, 1923 (for short Act of 1923) has the power to fix and determine the loss of earning capacity.”

In order to determine the substantial question of law, facts are briefly summarized as under:

Workman-respondent sustained injuries in an accident which occurred on 10th day of September, 1999 in the course of his employment with the appellant. The respondent-workman was engaged for Chiran (Sawing) work in compartment No. 36 Bhalessa Range. While discharging his work, a log of wood hit the respondent-workman which caused multiple injuries all over his body. The respondent-workman suffered fracture in his right leg and left foot.

Claim petition was filed by the respondent-workman before Authority under Workmen's Compensation Act, 1923 (Assistant Labour Commissioner, Doda) (for short "**ALC**") seeking compensation from the appellant on the ground that because of injuries sustained during the course of his employment, he was rendered permanently disabled. It was also pleaded in the petition that he was receiving Rs. 3000/- as monthly wages and was 25 years old.

Besides other witnesses, doctors were also examined and a certificate issued by the Hospital authorities, where workman was treated after the accident, was considered by the ALC and in terms of award dated 12.2.2009, appellant was directed to pay amount of Rs. 1,30,000/- (one lakh thirty thousand) including the interest amount of Rs. 5853/- (fifty eight hundred and fifty three) to the respondent-workman.

Learned counsel for the appellant in his fairness submitted that respondent-workman was engaged to do the Chiran (Sawing) work and that he sustained injuries in the course of his employment with the appellant. Learned counsel submitted that the ALC has without any authority of law assessed the loss of earning capacity of the respondent-workman. Learned counsel in support of his contention referred to Section 4(c)(ii) of the Act of 1923 and submitted that only a qualified Medical Practitioner could determine the loss of earning capacity of the respondent-workman. Learned counsel submitted that the impugned award requires to be set aside on this ground alone.

Learned counsel for the respondents faced with this situation submitted that the ALC may be directed to examine the qualified Medical Practitioner, who would state as to how much loss of earning capacity the respondent-workman has suffered and thereafter the ALC be directed to pronounce the award on the basis of such determination of loss of earning capacity.

Section 4(c)(ii) of the Act of 1923 is taken note of:

..... in the case of an injury not specified in Sch. I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

The workmen's compensation Act, 1923 (for short **Act of 1923**) is designed and engineered to ameliorate the lot of the working class. In order to ensure that benefits which accrued from the said welfare legislation reach to the aggrieved person with reasonable promptitude, efforts are being made by the Authorities under the Act of 1923 and the court of competent jurisdiction that such matters are decided at the earliest and purposive interpretation is placed on the provisions of the Act of 1923.

The Authority (ALC) has to decide the issue strictly in accordance with the mandate contained in the Act of 1923. In this case, admittedly, loss of earning capacity has not been assessed by the qualified Medical Practitioner as per the mandate contained in Section 4(C)(ii) of Act of 1923. In cruel disregard to the mandate

contained in Statute, Authority (ALC) itself has determined the loss of earning capacity suffered by the workman. The authority (ALC) is creature of Statute and has to act within the boundaries of the Statute itself. The authority (ALC) cannot travel beyond the defined frontiers of Act of 1923 and cannot determine the issue which he is not empowered by the Statute.

One of the doctors has deposed that workman-respondent suffered loss of 50% earning capacity and another has deposed that he has lost 5% of physical capacity. Learned authority (ALC) took it upon itself to assess the loss of earning capacity and fixed same at 35%. It was not the power and jurisdiction of the authority (ALC) to determine the loss of earning capacity.

For the above stated reasons, this appeal is disposed of in the following manner:

The impugned award to the extent of fixing the loss of earning capacity @ 35% and awarding the amount of Rs. 1,30,000/- (one lac thirty thousand) plus interest to the respondent-workman is set aside. The matter is remitted back to the learned Assistant Labour Commissioner, Doda with direction to take steps for determining the loss of earning capacity of the respondent-workman in accordance with the mandate contained in Section 4(c)(ii) of the Act of 1923. The authority to get the same assessed by the qualified Medical Practitioner on the basis of evidence already available on record and pass fresh award. This exercise be concluded and completed preferably within a period of one month from the date copy of this order is served upon it. The amount deposited by the appellant

shall not be released, until passing of the fresh award as directed herein above. Any amount to which the appellant may be entitled to, after the passing of the fresh award, shall be released in his favour in accordance with law. The assessed award amount shall be paid to claimant-respondent.

(Muzaffar Hussain Attar)
Judge

JAMMU
06.06.2012
Paramjeet