

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28th DAY OF OCTOBER, 2016

BEFORE

THE HON'BLE MRS.JUSTICE S.SUJATHA

M.F.A. No.375/2013 [WC]

BETWEEN :

THE MANAGING DIRECTOR
BHARAT GOLD MINES LIMITED
SUVARNA BHAVAN
OORGAUM POST
KOLAR GOLD FIELDS – 563 120

...APPELLANT

(BY SRI. T. RAJARAM, ADV.)

AND :

MR. EASTER CHRISTY DOSS
S/O. AESUPATAM
AGED ABOUT 55 YEARS
RESIDING AT NO.213,
NORTHGILL BIRDS
MARIKUPPAM [POST]
K.G.F.

...RESPONDENT

(BY SRI. A.J. SRINIVASAN, ADV.)

THIS M.F.A. IS FILED UNDER SECTION 30(1) OF THE EMPLOYEE'S COMPENSATION ACT, AGAINST THE JUDGMENT DATED 20.3.2012 PASSED IN WCA. NO./NFC/CR/NO.11/2007 ON THE FILE OF THE LABOUR OFFICER AND COMMISSIONER FOR WORKMEN COMPENSATION, KOLAR DISTRICT, KOLAR, AWARDED A COMPENSATION OF RS.3,19,277/- WITH INTEREST AT 7.5% FROM THE DATE OF PETITION TILL THE DATE OF ORDER AND 12% FROM THE DATE OF ORDER TILL THE DATE OF DEPOSIT.

THIS M.F.A. COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is by the Employer challenging the Judgment and Award passed by the Commissioner for Workmen's Compensation, Kolar, [Commissioner, for short] under Workmen's Compensation Act, 1923 ['Act' for short] in Case No.WCA/NFC/CR No.11/2007.

2. The only substantial question of law that arises for consideration in this appeal is whether the Commissioner was justified in assessing the loss of earning capacity of the injured workman at 80%?

3. The occurrence of the accident arising out of and in the course of employment is not in dispute. The employment accident occurred on 5.2.1999. The nature of the injuries sustained by the claimant/injured was contused abrasion paraverebral area RT. Side [T-11-L3 Level] severe tenderness L1. T12 spine. The claimant had taken treatment as an inpatient at St.

John's Medical College Hospital, Bangalore. It is an admitted fact that the claimant was working as a carpenter and was aged about 46 at the time of the accident. Exhibit.P4 is the identity card for disabled issued by the Directorate of Welfare of Disabled and Senior Citizens, Bangalore, Government of Karnataka, whereby the percentage of disability of the injured is mentioned as 60%. The Doctor who has deposed as PW.2 assessed 100% functional disability. Considering these aspects, the Commissioner assessed the loss of earning capacity at 80% to reckon the total compensation.

4. The learned Counsel appearing for the employer assailing the impugned Judgment and Order, would contend that the assessment of loss of earning capacity made by the Commissioner at 80% is nothing but an exaggeration. The Doctor who had assessed the functional disability at 100% has not considered the

identity card for disabled issued by the Government of Karnataka. Thus, the learned Counsel submits that the disability for spine would not be considered as functional disability to the extent of 80%.

5. On the other hand, learned Counsel appearing for the workman, placing reliance on the Judgment of the Hon'ble Apex Court in the case of **'PRATAP NARAIN SINGH DEO vs. SHRINIVAS SABATA AND ANOTHER'** reported in **1976 ACJ 141**, would contend that the disability to the spine is very serious. Subsequent to the accident, the workman/claimant is totally bedridden. The functional disability assessed by the Doctor at 100% would be the loss of earning capacity. Even disregarding the same, the Commissioner assessed the loss of earning capacity at 80% which cannot be found fault with.

6. It is evident that the claimant/workman sustained employment injuries in the accident arising

out of and in the course of employment working under the appellant/employer. The injuries sustained by the claimant are not the schedule injuries. The loss of earning capacity in the case of injuries other than the schedule injuries has to be ascertained as per section 4[1][c][ii] of the Act which contemplates in the case of an injury not specified in Schedule-I, such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury. Explanation-II to the said provision provides that in assessing the loss of earning capacity for the purpose of sub-clause[ii], the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule-I. In the case of **PRATAP NARAIN SINGH DEO** [supra], the Hon'ble Apex Court was considering the case of a workman who had sustained injuries as a result his left arm above elbow was amputated. Thus,

he became unfit for the work of a carpenter. In such circumstances, the Hon'ble Apex Court adjudged him to have lost 100% of his earning capacity.

7. In the light of the Judgment cited supra and the statutory provision as narrated above, the factual matrix of the present case is examined. It is manifest that the injured workman had sustained the disability for spine and it has the impact on the functional disability. But as to what extent is the crucial question that has to be answered based on the medical records. The Doctor has assessed the loss of earning capacity based on the medical records furnished by the claimant. However, Exhibit.P4 is the document issued by the State Government which shows the disability to the extent of 60%. Considering these aspects, this Court is of the considered opinion that it would be just and reasonable to strike a balance between the assessment made by the Doctor and the identity card for disabled

issued by the Government of Karnataka coupled with the assessment made by the Commissioner to assess the loss of earning capacity of the injured workman which in the considered opinion of this court would be reasonable at 65%.

8. Accordingly, the claimant shall be entitled to total compensation Rs.2,59,412/- [4,000 x 60% x 166.29 x 65%] as against Rs.3,19,277/- awarded by the Commissioner. However, the claimant shall be entitled to interest on the award amount of Rs.2,59,412/- at 12% per annum after thirty days from the date of the accident till the date of deposit.

9. This view in much as awarding interest is supported by the Judgment of the Hon'ble Apex Court in the case of '**ORIENTAL INSURANCE CO., LTD., vs. SIBY GEORGE AND OTHERS**' reported in **2012 ACJ 2126**. The substantial question of law is answered

accordingly. The appeal stands disposed of to the extent indicated above.

The Award amount in deposit shall be transferred to the jurisdictional Commissioner for disbursement, if found in excess, shall be refunded to the appellant.

**Sd/-
JUDGE**

AN/-