Siddappa Vs. the General Manager, K.S.R.T.C. and anr.

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SooperKanoon Citation : sooperkanoon.com/376264

Court : Karnataka

Decided On : Nov-02-1987

Reported in : II(1988)ACC539; (1993)IIILLJ457Kant

Judge : M. Rama Jois and ;H.G. Balakrishna, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 4(1)

Appeal No. : M.F.A. No. 1145 of 1987

Appellant : Siddappa

Respondent : The General Manager, K.S.R.T.C. and anr.

Advocate for Def. : L. Govindraj, Adv.

Advocate for Pet/Ap. : Shivaraj Patil, Adv.

Disposition : Appeal allowed

Judgement :

M. Rama Jois and Balakrishna, JJ.

1. Heard. Appeal admitted.

2. By consent of the learned Counsel on both sides, the matter is taken up for final hearing, heard and disposed of by this judgment.

3. This appeal is preferred by the appellantwho was a workman employed as a Driver in theKarnataka State Transport Corporation, Bangalore (hereinafter called 'the Corporation') against the Award passed by the Commissionerfor Workmen's Compensation and LabourOfficer, Hubli Sub-Division, Hubli (hereinaftercalled 'the Commissioner') on 16.8.1985 in No.WCA/NF/28/1983 wherein he held that theappellant is entitled to receive compensation at60% of the permanent total disablement compensation which works out to a sum of Rs.20,160/- out of the total claim of Rs. 33,600/-together with simple interest at 6% per annumcommencing from one month after the date ofaccident and also a penalty of 20% of the compe-(sic) on account of default of the Corporation in depositing the compensation awarded within 30 days of the date of accident. The grievance of the appellant is that he ought to have been awarded 100% of the permanent total disablement compensation.

4. The undisputed facts of the case, briefly stated, are these:

The appellant was an employee of the Corporation and on 16-7-1983 while he was driving bus bearing registration No. MYF 8830 from a place called Byadgi to Hireke-rur, an on coming luxury bus bearing registration No. TNJ 7599 driven rashly and negligently collided against his vehicle at Motebennur village as a consequence of which the appellant sustained severe injuries on his right leg which necessitated amputation of the right leg at its junction of middle and lower third (Guilotine) in July 1983 and subsequently a revision amputation below the knee was performed by the Doctor at K.M.C. Hospital, Hubli. At the relevant period of the accident, the appellant was drawing wages of Rs. 707-55 per month in the range of Rs. 700-800 per month. The Wage Slip produced by the appellant in evidence is Ex P-1. The Commissioner determined that the description of the injury fell under Sr. No. 19 of Schedule I and Part II of the Workmen's Compensation Act, 1923 (hereinafter called 'the Act') and that percentage of loss of earning capacity was 60% and awarded a compensation of Rs. 20,160/- as against the claim of Rs. 33,600/-. The Corporation did not appeal against the award.

5. At the time of hearing, we asked the learned Counsel for the Corporation as to whether the appellant has been or could be provided with any alternative employment. Learned Counsel submitted that as a matter of fact question of finding an alternative employment to the appellant was examined and as there was no job which the appellant could do, the Corporation found no alternative than to remove the appellant from service.

6. The short point for consideration before us is whether the Commissioner was justified in estimating the loss of earning capacity at 60% and whether the Commissioner has adopted the proper basis for estimating the loss of earning capacity and whether the appellant suffered a total loss of earning as distinguished from partial loss of physical capacity and is therefore entitled to a total compensation of Rs. 3 3,600 / - instead ofRs.20,160/-.

7. In order to find the answer to the question we have to look to clauses of Section 4(a), (b) (c) of the Act and the relevant part of Schedule II and Schedule IV. They read;

4. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely-

(a) Where death results from the injury and the deceased workman has been in receipt of monthly wages tailing within limits shown in the first column of Schedule IV the amount shown against such limits in the second column thereof; (b) Where permanent total disablement results from the injury and the injured workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV the amount shown against such limits in the third column thereof; (c) Where permanent partial disablement results from the injury -

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

PART-II LIST OF INJURIES DEEMED TO RESULT IN PERMANENT/PARTIAL DISABLEMENT Amputation cases-lower limbs.

Sl. Descriptionof injuryPercentageof loss of earningcapacity

19Amputationbelow middle thigh to 31/2' below knee60

SCHEDULE IV

COMPENSATIONPAYABLE IN CERTAIN CASES

Monthlywages of the workman injured Amountof compensation for

DeathPermanent total disablement Halfmonthly payment as compensation for temporary disablement

1 2 3 4

Morethan Rs.700/- but notmore than Rs.800/- Rs.24000/- Rs.33600/- 160-00

According to Clause (B), where on account of an injury permanent total disablement results, the compensation payable to the workman concerned is in accordance with IV Schedule. As the monthly wages of the appellant was between Rs. 700-800, the compensation payable is Rs. 33,600/-.

But what the Commissioner did was to apply Clause (c)(i). As the injury caused to the appellant resulted in amputation of appellant's right leg, he held there must be deemed to be a permanent partial disablement at 60%. Accordingly he held that 60% of the amount of Rs. 33,600/-payable in the case of permanent total disablement was payable to the appellant. What he missed to notice was that, all that section 4(1)(c)(i) read with Part II of Schedule I is that in the case of injury specified therein, the percentage of permanent total disablement to the extent specified therein must be deemed to have occurred, without any further proof.

That provision does not debar the payment of compensation under Section 4(1)(b) if in a given case, it is proved that though the injury suffered by a workman falls under one of the item specified in Part II of Schedule I having regard to the nature of employment in which the workman concern -ed was employed, there has been permanent total disablement. If such a fact is proved, not withstanding the fact that the injury suffered by a workman is one of those specified in Part II of Schedule I, he would be entitled to the compensation in accordance with the IV Schedule. This point has been lost sight of by the Commissioner.

8. Now, the next question for consideration is whether in fact the appellant has suffered permanent total disablement. The Commissioner has totally overlooked the fact that the best estimate of loss of earning capacity can be given by the employer himself who had the opportunity of seeing the workman at work before the accident and his capacity after the accident. As already pointed out, the learned Counsel for Corporation submitted that the appellant was found unfit for work in the Corporation in any class of service after the accident and, therefore removed him from service. This established conclusively that the appellant had suffered total permanent disablement.

9. The Act is a beneficial legislation. In 1966 (1) L.I.C. 12, it was held that 'it is desirable and in accordance with the general rule that the Act should be broadly and liberally construed in order to effectuate its evident interest and purpose in the application of the provisions which governed the nature and determination of injuries for which compensation may be had'. In Sarup Singh v. Mukundlal, it was held that in a welfare State which is being progressively industrialised, legislative measures like the Act should be construed in a more liberal sense in favour of the workmen so that deserving workman gets full and speedy benefit and advantage of these beneficiary measures. Such liberal interpretation would accomplish the human and beneficial purposes of this legislation the provisions of which have been recognised by our society and by our Constitution'. As far as this case is concerned apart from liberal construction, in our opinion, even the liberal construction yields the same result.

10. In the result, we allow this appeal, we modify the impugned award by enhancing the compensation to Rs. 33,600/- towards personal injury caused to the appellant in the accident which occurred on 16-7-83 in the course of employment. The interest shall be calculated on the sum of Rs. 33,600/- at 6% per annum as awarded by the Commissioner instead of on the sum of Rs. 20,160/-. All other reliefs granted by the Commissioner are confirmed. The parties arc directed to bear their own costs.