

**Rakesh Vs. Narayan and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Apr-25-2007

**Reported in :** 2008ACJ2267

**Judge :** Deepak Verma and ;S.K. Kulshrestha, JJ.

**Appellant :** Rakesh

**Respondent :** Narayan and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Deepak Verma and S.K. Kulshrestha, JJ.**

1. This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the order dated 28.11.2003 passed by the Commissioner for Workmen's Compensation, Indore in Case No. 64 of 2001. The appellant had approached the Commissioner for Workmen's Compensation on the ground that he was in the employment of the respondent No. 1 and received wages in sum of Rs. 3,000 per month. At the time of alleged accident he was only 18 years old.

2. In intervening night of 28/29.5.2001 while in the employment of respondent No. 1, he was going by tractor bearing registration No. MP 11-D 2685 as a labourer, on account of rashness and negligence of the driver of the tractor, it overturned

and he sustained severe injuries in his left leg and during treatment, his left leg had to be amputated below knee. On account of amputation of his left leg, he claimed compensation. It was stated that vehicle was insured by New India Assurance Co. Ltd., respondent No. 3.

3. This appeal has been filed mainly on the ground that the Commissioner for Workmen's Compensation committed an error of law in assessing the loss of income at 50 per cent, while in view of nature of injury it should have been determined at 100 per cent as loss of earning capacity.

In view of the submissions of learned Counsel appearing for appellant, the only question that falls for consideration is as to what extent there was loss of earnings in view of the injury sustained.

4. Learned Counsel for insurance company has invited our attention to Schedule I, Parts I and II appended to the Workmen's Compensation Act and pointed out that the nature of injury sustained by the appellant is covered by item No. 20 in Part II of Schedule I of the Act, and the Commissioner, Workmen's Compensation, in no way erred in holding the loss of earning capacity at 50 per cent.

5. Learned Counsel for the appellant has invited our attention to the decision in *Pratap Narain Singh Deo v. Shrinivas Sabata* 1976 ACJ 141 (SC) and also to the decision of this Court in *United India Insurance Co. Ltd. v. Balmat Singh* : (1996)IILLJ525MP , in which it has been held that after the accident if the injured workman has become permanently disabled, it being a case of total disablement, workman is not debarred from claiming compensation more than the percentage specified in the Schedule for the loss of earning capacity. The said observation was made in view of the decision of the Supreme Court in the case of *Pratap Narain Singh Deo v. Shrinivas Sabata* (supra).

6. We have gone through the said decision, but we are of the view that in the light of the question raised for our consideration, it is not relevant as to whether the appellant is entitled to more than what has been provided in the Act. What is required to be seen is as to whether according to the Schedule, the injury of the appellant would fall in Part II or Part I item No. 3. For ready reference we produce

clause 3 of Part I of Schedule I and clause 20 of Part II in Schedule I:

Schedule (4)]	I[See	Sections	2(1)	and
of injury capacity	Percentage	of loss	ofNo.	Description of earning capacity
			Serial No.	Part I List of injuries deemed to result in permanent total disablement XXX XXX XXX3. Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot 100
			50	Part II List of injuries deemed to result in permanent partial disablement XXX XXX XXX20. Amputation below knee with stump exceeding 8.89 cms but not exceeding 12.70 cms XXX XXX

7. A bare perusal of aforesaid Schedule clearly manifests that in case of double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot, the earning capacity is fully lost. In the case in hand, it is not disputed that the appellant had suffered amputation below knee and it is not the case of the appellant that there was amputation through leg or thigh, or amputation through leg or thigh on one side and loss of the other foot. The injury would, therefore, not be covered by the item No. 3 of Part I, but under item No. 20 of Part II, the amputation below knee with stump exceeding 8.89 cm but not exceeding 12.70 cm. No evidence of size has been given even in the light of item Nos. 20, 21 and 22 with regard to amputation; and the loss of earning capacity has rightly been considered as at 50 per cent as indicated at item No. 20.

8. We, therefore, find that the Commissioner for Workmen's Compensation did not in any manner err in holding that in the case of appellant the loss of earning capacity was 50 per cent and not 100 per cent.

We are conscious of the fact that interpretation of law should lean towards the workman, but in view of unambiguous position of law, we are unable to hold that the percentage of loss of earning capacity was 100 per cent.

9. We do not find any merit in this appeal. The appeal is dismissed, but with no order as to costs.

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