Vanajakshan Vs. Joseph

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Court : Kerala

Decided On : Apr-03-2003

Reported in : 2003ACJ1363; 2003(2)KLT462; (2003)IILLJ1103Ker

Judge : Jawahar Lal Gupta, C.J.,; R. Rajendra Babu and; Kurian Joseph, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 2, 3 and 4

Appeal No. : M.F.A. No. 150 of 1991

Appellant : Vanajakshan

Respondent : Joseph

Advocate for Def. : K.T. Shyamkumar, Adv.

Advocate for Pet/Ap. : M.M. Saithu Mohammed, Adv.

Disposition : Appeal dismissed

Judgement :

Jawahar Lal Gupta, C.J. (Oral)

1. What is the true ambit and import of 'total disablement' as contemplated under the Workmen's Compensation Act, 1923? Does the loss of eyesight in one eye entitle the workman to claim compensation for total disablement? This is the primary issue that arises in this appeal. The matter has been placed before the

Full Bench on a reference by the Division Bench. The relevant facts may be briefly noticed.

2. The appellant was working as a driver with the first respondent. On March 28, 1988 he was asked to take the car from Parur to Cannanore. He met with an accident and suffered injuries. One of the injuries resulted in the loss of vision in the left eye.

3. The appellant-workman filed a petition under Section 22 before the Commissioner for compensation. He claimed that he was getting a salary of Rs. 1,500/- per mensum. He had suffered disability of 45% on account of the injuries. He was 33 years of age. Thus, he claimed a lumpsum payment of Rs. 68,060.25. The employer and the insurer were impleaded as respondent Nos. 1 and 2. The workman led evidence. After the evidence had been closed, he filed an application for amendment of the claim petition. He claimed to have suffered 100% disability and thus prayed for the award of Rs. 1,51,745/- by way of compensation.

4. The authority under the Act considered the matter. It found that according to medical evidence the claimant had suffered a permanent partial disability of 45%, The claim of 100% disability was not supported by any evidence. On this basis a compensation of Rs. 45,374/- was awarded.

5. Aggrieved by the award, the claim'ant has filed the present appeal.

6. When the matter was posted before a Division Bench for hearing, it was contended on behalf of the appellant that in view of the decision of Their Lordships of the Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata (AIR 1976 SC 222) the appellant was entitled to compensation on the premises that he had suffered total disablement. The Bench noticed various decisions. Finding that there was some difference of opinion within the court itself the case was referred to a larger Bench.

7. Learned counsel for the parties have been heard. Mr. M.M. Saidu Muhammed, learned counsel for the appellant has contended that as a result of the injury the appellant is unable to work as a driver. Thus, he has suffered total disablement.

The competent authority had erred in awarding compensation on the basis that the disability was only 45%. On the other hand, Mr. K.T. Shyam Kumar has submitted that the compensation is relatable to the loss of earning capacity actually suffered by the claimant. In view of the plain language of the provisions, the compensation has to be determined with reference to the loss of earning capacity and not the job, which was being actually performed by the claimant at the time of the accident.

8. In view of the contentions raised by the learned counsel for the parties, the short question that arises for consideration is - 'Does the statute provide for the award of compensation on the basis of loss of earning capacity or with reference to the ability to do the work, which the claimant was actually doing at the time of the accident?'

9. A brief reference to the statutory provisions is necessary.

10. The Act was promulgated to provide for payment by certain classes of employers to their workmen by way of compensation for injury by accident. Section 2 of the Act defines various expressions. The relevant provision is contained in Clause (1). It reads as under: -

'2(1) 'total disablement' means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.'

A perusal of the above provision shows that the disablement has to be considered in the context of the injury incapacitating the workman 'for all work' and not for the work for which he was actually employed. The reference is to the work, which the workman 'was capable of performing at the time of accident' and not to that which

he was actually doing. In other words, the disablement has to be determined with reference to the loss of ability to do any work, which the employee was capable of doing.

11. The proviso to the provision is also indicative of the legislative intent. It introduces a fiction. A presumption of permanent disability can be drawn when a person is disabled by an injury specified in Part I of Schedule I. Such an inference is also permissible when there is a combination of injuries specified in fart II. This is, however, subject to the aggregate percentage 'of the loss of earning capacity'. In other words, even when the statute introduces a fiction by way of a presumption of permanent disability, it refers to the loss of earning capacity and not to the disability to perform the duties of the particular job being performed by the workman.

12. Section 3 provides for the payment of compensation by the employer when 'any injury is caused to a workman by accident arising out of and in the course of his employment.' The provision for determination of compensation is contained in Section 4. A perusal thereof shows that even when the injury results in death the compensation is limited to 50% the monthly wages multiplied by the relevant factor. In other words, the compensation is for loss of wages or the earning capacity and n6t for the physical suffering of pain or the expense on treatment etc. A cumulative consideration of the provisions contained in Sections 2, 3 and 4 clearly shows that the intention of the Legislature was to compensate the workman for loss of earning capacity and not for the failure to perform the duties of the particular post on which he was actually working.

13. Even a reference to Schedule I is instructive. Part I of Schedule I lists the injuries which are deemed to result in permanent total disablement. A perusal thereof shows that in a case where a workman loses both hands, a presumption of 100% loss of earning capacity is raised by the statute. So far as loss of sight is concerned the entry appears at Sl. No. 4. It reads as under: -

Serial No.

Description of injury

Percentage of loss

of earning capacity

4.

Loss of sight to such an extent as to render theclaimant unable to perform any work for which Eyesight is essential.

100

The above provision indicates that it is only when the loss of sight is complete that the presumption of 100% loss of earning capacity can be raised by the authority. Not otherwise. Similar is the position when one refers to Part II, which lists certain other kind of injuries. Two of these, which are relevant for the purpose of the present case, are at serial Nos. 25 and 26. These read as under:

Serial No.

Description of Injury

Percentage of loss

of earning capacity

25

Loss of one eye, without complications, the otherbeing normal

40

25

Loss of vision of one eye, without complicationsor disfigurement of eye-ball, the other being normal.

30

A perusal of these entries shows that when there is loss of sight only in one eye, the statute does not provide for a presumption of 100% loss of earning capacity. In fact under the two entries it is limited to 40 and 30% respectively.

14. The above provisions clearly show that the compensation has to be determined with reference to the loss in earning capacity and not the ability to perform the duties of the job, which was being done by the workman at the relevant time.

15. It is undoubtedly true that the Act is a piece of social legislation. It embodies beneficent provisions. Normally the provisions have to be liberally considered. However, while considering the provisions the plain language cannot be overlooked. The words have to be given their plain and clear meaning. In our view the Legislature has made its intention absolutely clear in unambiguous words. The compensation has to be assessed on the basis of the percentage of the loss of earning capacity. While determining the loss of earning capacity the authority has to keep in view the loss of capacity of a workman 'for all work which he was capable of performing' and not for the work which he was actually doing.

16. There is another aspect of the matter. The statute does not provide for compensation for anything arising out of a tort. It seeks to compensate an employee for an injury arising out of the relationship of employer and employee. The statute does not seek to compensate the workman for the suffering that he goes through on account of an injury. It does not even make a provision for reimbursing the expenses on actual treatment for the injuries. It only provides for compensation for loss of earning capacity. Thus, the authority, while determining compensation under the statute, has to keep in view only the loss of wages/earning capacity suffered by the workman. Nothing more.

17. Mr. Muhammed has referred to the decision of a Division Bench of this Court in Rukiya Bai v. George D'Cruz (1960 KLT 824). In this case the Division Bench was dealing with the claim of a workman who was working as a labourer at the Port.

He had suffered spinal injury in an accident. As a result, he was unable to walk. The medical evidence clearly showed that he was found to have been 'permanently disabled due to the spinal injury sustained by him.' In this situation the Bench had found that 'there is no evidence to show that the workman was at the time of accident capable of doing any work other than that of an ordinary labourer engaged in the physical handling of cargo at the Port or that it is possible for him to obtain any employment whatsoever in his present condition'. Thus, the claim based on total disablement was sustained. We cannot read this judgment to mean that the incapacity for work has to be determined with reference to only the job for which the workman was engaged.

18. Mr. Muhammed has also drawn our attention to the decision of Their Lordships of the Supreme Court in Pratap Narain Singh Deo v. Shrinivas Sabata (AIR 1976 SC 222). In this case a carpenter had lost his hand. The Commissioner had found that 'by loss of his 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'. Their Lordships, while hearing an appeal filed by the employer, had taken the view that the finding recorded by the Commissioner was 'reasonable and correct'. The judgment is not an authority for the proposition that the compensation has to be determined only with reference to the work that was being done by the workman and not the loss in earning capacity. It may also be mentioned that amputation of hand below the shoulder falls under Entry 2 of Part II, Schedule I. This entry raises a presumption that the loss of earning capacity shall be 80%. However, in case of loss of only one eye, the loss of earning capacity fixed under the Schedule is only 40%. Thus, the appellant cannot claim parity with the case of amputation of hand.

19. In fact, as pointed out by Mr. Shyam Kumar, learned counsel for the respondent, the decision in Deo's case has been considered by Their Lordships of the Supreme Court in Amar Nath Singh v. Continental, Constructions Ltd. (2001) 10 Supreme Court Cases 760. While dealing with the judgment it was observed that in a case where 'there is a loss of one eye and the earning capacity of the appellant has been reduced from what he was capable of earning at the time of the accident, as a result of disablement' the claim for total disablement could not

be sustained. The decision of the High Court in that behalf was sustained.

20. Mr. Muhammed has also referred to the decision of a Bench of this Court in Kochu Velu v. Joseph (1984 KLT Short Notes, Case No. 129, page No. 79). In this case a workman who was engaged in plucking coconuts by climbing coconut trees had suffered injuries by a fall. The Commissioner had assessed the disability at 50% and granted compensation on that basis. The Bench appears to have taken the view that the injury had caused total disablement as he will not be able to continue the occupation of climbing coconut trees. Regretfully though respectfully, we do not find that this decision embodies the correct enunciation of law.

21. Learned counsel for the appellant has also referred to the decision in E.S.I. Corporation v. P.K. Raju (1995 (1) KLT Short Notes 29, Case No. 41). This was a case of a toddy tapper. The Employees State Insurance Medical Board had fixed the disability at 40%. The employer had not given him any other job. The workman had suffered a strain in the spinal column. In this situation the Bench had taken the view that there was permanent total disablement. The full facts are not clear. However, on a perusal of the short note we cannot read the judgment to mean that a presumption of permanent total disablement shall be drawn even if the loss in earning capacity was less than 100%.

22. Learned counsel for the parties have also referred to the decision of the Nagpur High Court in General Manager, G.I.P. Rly. v. Shankar (AIR 1950 Nagpur 201). Herein the view taken by the Court was at variance with that of this Court. We find that the view as taken by the Nagpur High Court was in conformity with the provisions of the statute.

23. What is the position in the present case? Admittedly, the appellant himself had claimed the disability to be 45%. The medical evidence clearly showed that there was partial disability. On this basis the competent authority had assessed and awarded the compensation. No evidence was led by the appellant to show that he was not capable of doing any work other than that of a driver. Thus, there was nothing before the court on the basis of which it could have drawn an assumption that there was 100% loss of earning capacity. Resultantly there is no infirmity in the finding recorded by the Commissioner.

24. No other point has been raised.

25. In view of the above it is held that

(1) The competent authority has to award compensation on the basis of evidence adduced by the parties during the proceedings.

(2) The compensation has to be assessed with reference to the loss in earning capacity and not on the basis of the ability to perform the duties of the particular job, which was being performed by the workman. If, in a given case a workman is able to prove that he was incapable of doing any other job, the competent authority shall consider and decide the matter in the light of the evidence as adduced by the parties.

So far as the present case is concerned, the findings recorded by the Commissioner are based on an appreciation of the evidence. Nothing has been pointed out to show that the findings are wrong. The conclusion is in conformity with the provisions in the statute. There is no infirmity in the order. Thus we find no merit in the appeal. It is, consequently, dismissed. However, the parties are left to bear their own costs.