

**Narayani Vs. Managing Director, Coastal Packer Private Ltd. and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/832930](http://sooperkanoon.com/832930)

**Court :** Chennai

**Decided On :** Sep-26-2008

**Reported in :** [2008(119)FLR1059]

**Judge :** R. Sudhakar, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 4(1) and 4A(3)

**Appeal No. :** C.M.A. (N.P.D.) No. 809 of 2000

**Appellant :** Narayani

**Respondent :** Managing Director, Coastal Packer Private Ltd. and anr.

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** R. Muralidharan, Adv.

**Judgement :**

**R. Sudhakar, J.**

1. The applicant/workman has filed this appeal challenging the order dated 28.4.11999 passed in W.C. No. 56 of 1997 on the file of the Commissioner for Workmen's Compensation-II (Deputy Commissioner of Labour-II), Chennai-6 stating mat for the 4% disability assessed by the doctor, the loss of earning capacity taken at 18% by the Commissioner for Workmen's Compensation to

determine the compensation is erroneous and it should be enhanced.

Even though the respondents have been served, none appear on their behalf.

2. It is a case of injury. The brief facts of the case are as follows:-The appellant, a lady, was employed as a labourer by the second respondent-contractor in the factory of the first respondent. On 15.7.1996, the appellant was working in the box cutter machine and while operating the said machine, her right hand palm was pulled into the roller and her palm was crushed. She suffered multiple fractures and was treated at the hospital. She filed a claim in a sum of Rs. 1,50,352.50 as compensation with interest.

3. In support of her claim, the workman was examined as A.W.1. One Dr. Nandakumar was examined as A.W.2. Exs.A-1 to A-12 were marked as detailed below:

Exs. A-1 and A-3 are the O.P. Chits,

Ex. A-2 is the wound certificate,

Ex. A-4 is the time card,

Ex. A-5 is the legal notice,

Ex A-6 is the acknowledgement,

Ex. A-7 is the returned cover,

Ex. A-8 is the doctor certificate,

Ex A-9 is the medical bills,

Ex.A-10 is the transfer certificate,

Ex. A-11 is the disability certificate, and

Ex. A-12 is the X-Ray.

On behalf of the Employer, one thiru N. Murali, the Director of the first opposite party's company was examined as R.W. 1. One Thiru V. Raja, the Supervisor of the company was examined as R.W. 2. On behalf of the second respondent contractor, the second respondent Thiru R. Amba Sankar himself was examined as R.W. 3. Exs. R-1 to R-3 were marked on behalf of the respondents/opposite parties as detailed below:

Ex. R-1 is the copy of attendance register,

Ex. R-2 is the time table, and

Ex. R-3 is the agreement.

4. Based on the oral and documentary evidence, the Commissioner for Workmen's Compensation awarded a sum of, Rs. 12,836.00 as compensation with interest at 12% per annum from the date of accident. Aggrieved against that order, this appeal is filed seeking enhancement of compensation by the workman.

5. At the time of admission, the following substantial questions of law were framed for consideration:

(1) Whether inspite of the assessment of disability at 40% by the expert A.W.2 Dr. Nandakumar, the finding of the Court below assessing the disability at 18% is legally sustainable?

(2) Whether the calculation arrived at and relevant factor adopted are legally sustainable?

6. A.W 2, the Doctor in his evidence stated that the appellant workman sustained crush injury to the right hand, particularly the right index finger was fractured and the workman underwent a corrective surgery. The disability was assessed by the doctor A.W.2 as 40% under Ex A-11 disability certificate. The accident and the injury sustained by the workman is not disputed. The finding of the Tribunal as far as the injury is concerned is that the workman's right hand index finger was fractured and she underwent surgery and the disability is 40% as stated by the doctor in Ex.A-11. The Commissioner of Workmen's Compensation clearly came

to conclusion that the injury sustained by the workman is not included in the Schedule of the Workmen's Compensation Act. The Commissioner placed reliance on serial No. 27 of the Schedule-I, which relates to loss of naming capacity for loss of a finger. By considering the evidence of the doctor A.W.2 and that of the Schedule-I to the Workmen's Compensation Act, the Commissioner fixed the loss of earning capacity at 18% (14 + 4 = 18) and calculated the compensation by applying the factor applicable for the 18 years old workman. Based on the wages drawn by her, a sum of Rs. 12,836/- was granted as compensation with interest at 12% per annum from the date of accident.

7. The substantial questions of law framed as above become redundant in view of the following reasons:-

(i) It is an admitted case that the injury suffered by the workman is a non-scheduled injury. Therefore, the provisions of Section 4(1)(c)(xi) of the Workmen's Compensation Act gets attracted and the same reads as follows:

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

(a) x x x

(b) x x x

(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 m 1M proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation-I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation-II.--In assessing the loss of earning capacity for the purposes of Sub-clause (ii), the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule-I.

(ii) Therefore, the loss of earning capacity has to be assessed by the qualified medical practitioner and not by the Commissioner for Workmen's Compensation.

(iii) The decision of the Apex Court in National Insurance Co. Ltd. v. Mubasir Ahmed and Anr. : 2007 (1) CLR 683 (SC) : 2007 (112) FLR 1033 (SC) : 2007 (53) AIC 141 (SC), will apply to the issue in the present case. Paragraph 7 and 8 of the decision are relevant and are read as follows:

7. These cases related to injuries which were not specified in Schedule-I and as such cases are covered by Section 4(1)(c)(ii) Explanation. In terms of Explanation-II the qualified medical practitioner has to assess loss of earning capacity having due regard to percentage of loss of earning capacity in relation to the different injuries in Schedule-I. Explanation-I also provides that where there are more than one injury, the aggregate has to be taken, so that the amount which would be payable for permanent total disablement is not exceeded.

8. Loss of earning capacity is, therefore, not a substitute for percentage of the physical disablement, it is one of the factors taken into account. In the instant case the doctor who examined the claimant also noted about the functional disablement. In other words, the doctor had taken note of the relevant factors relating to loss of earning capacity. Without indicating any reason or basis the High Court held that there was 100% loss of earning capacity. Since no basis was indicated in support of the conclusion, same cannot be maintained. Therefore, we set aside that part of the High Court's order and restore that of the Commissioner, in view of the facts situation. Coming to the question of liability to pay interest,

Section 4-A(3) deals with that question. The provision has been quoted above.

Therefore, in the light of the statutory provision which provides that the loss of earning capacity should be assessed by a qualified medical practitioner which has been interpreted by the Apex Court's decision as above, the qualified medical practitioner alone should have assessed the loss of earning capacity, having regard to the percentage of disability and other factors.

(iv) In this case, the Commissioner for Workmen's Compensation has assessed the loss of earning capacity and not the qualified medical practitioner. In such view of the matter, the order of the Commissioner for Workmen's Compensation cannot be sustained.

8. In the result, the order of the Commissioner for Workmen's Compensation is set aside and the matter is remitted back to the Commissioner for Workmen's Compensation for reconsideration in accordance with the provisions of Section 4(1)(c)(ii) of the Workmen's Compensation Act and in the light of the Apex Court's decision cited above. The appellant is entitled to let in evidence through a qualified medical practitioner for assessing the loss of earning capacity and the respondents will be entitled to contest the matter on merits. Since the accident is of the year 1996, it is desirable that the Commissioner for Workmen's Compensation shall decide the matter at an early date the Civil Miscellaneous Appeal is allowed by way of remand. There will be no order as to costs.

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