

CASE NO.:
Appeal (civil) 7641 of 2009

PETITIONER:
S. SURESH

RESPONDENT:
ORIENTAL INSURANCE CO. LTD. & ANR.

DATE OF JUDGMENT: 14/09/2009

BENCH:
D.K. Jain & H.L. Dattu

JUDGMENT:
JUDGMENT

[2009] 14 S.C.R. 990

The following Order of the Court was delivered

ORDER

1. Leave granted.

2. Challenge in this appeal is to the judgment and order dated 23rd July, 2007 rendered by a Division Bench of the Karnataka High Court, whereby the principal amount of compensation of Rs.5,20,584/-, awarded by the Commissioner for Workmen's Compensation (for short, "the Commissioner") has been reduced to Rs.2,60,292/-.

3. The appellant, hereinafter referred to as, "the claimant", was a lorry driver. On 26th September, 2002, while driving the vehicle, he met with an accident near Ganesh Garage on Bangalore Mangalore Road. He lost control of the vehicle and it overturned on the right side of the road. As a result of the accident, the claimant suffered serious injuries to his right leg; on the head and other parts of the body. Although he survived but ultimately his right leg had to be completely amputated just below the knee.

4. The claimant filed a claim petition before the Commissioner praying for adequate compensation. It was pleaded that as he was 25 years of age; earning Rs.4,000/- per month with daily allowance of Rs.100/-; had suffered permanent disability, which would prevent him from engaging in the job of driver which he used to do earlier, he was entitled to adequate compensation from the Insurance Company and the owner of the lorry, respondent Nos. 1 and 2 in this appeal.

5. The claim petition was contested by respondent No.1. Respondent No.2 was proceeded against ex-parte. On the pleadings of the parties, the Commissioner framed as many as six issues, including the issue with regard to the percentage of disability and loss of earning capacity suffered by the claimant. On this issue, the claimant adduced evidence of the Doctor, who had treated him after the accident and his photographs (Ex. P-5). The witness stated that since the claimant had suffered 93% permanent disability in his right leg, he will not be able to do the job of a driver or any other job because he will not be able to stand or walk without support. Accepting the evidence of the doctor, the Commissioner came to the conclusion that the claimant's right leg up to the knee having been amputated, he has suffered a loss of 100% of his earning capacity as a driver. Inter-alia, observing that the claimant was 25 years of age at the time of the accident, by his order dated 17th January 2005, the Commissioner took his salary at Rs.7,000/- per month (Rs.4,000/- per month and Rs.100/- daily allowance) and accordingly determined the compensation payable to him at Rs.5,20,584/-. Interest @ 12% per annum thereon from one

month after the date of the accident till the date of payment was also awarded.

6. Being dissatisfied with the award, the Insurance Company preferred appeal to the High Court. As stated above, the High Court accepted the plea of the Insurance Company that as per Schedule to the Workmen's Compensation Act, 1923 (for short, "the Act"), loss of a leg on amputation amounted to a 50% reduction in the earning capacity. The High Court held that being an injury, specified in Schedule I, medical opinion could not be relied upon in terms of Section 4(1)(c)(ii) of the Act. Accordingly, applying the percentage of loss of earning capacity, as specified in Part II of Schedule I, the High Court reduced the compensation by 50%. However, award of interest thereon @ 12% per annum from one month after the date of accident till the date of payment was maintained. Hence the present appeal by the claimant.

7. The correctness of the impugned judgment is questioned mainly on the ground that the claimant being a lorry driver, the loss of his right leg ipso facto meant a "total disablement" as understood in terms of Section 2(1)(1) of the Act and as such the compensation payable to the claimant had to be computed on that basis. In support of the plea, reliance is placed on a four-Judge Bench decision of this Court in Pratap Narain Singh Deo vs. Srinivas Sabata & Anr.¹ In that case, a carpenter had suffered amputation of his left arm from the elbow. This Court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under:

"5. The expression "total disablement" has been defined in Section 2(1)(1) of the Act as follows:

(1) "total disablement" means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement. It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

The injured workman in this case is carpenter by profession....By loss of the 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. This is obviously a reasonable and correct finding."

8. In our view, the ratio of the said judgment is squarely applicable to the facts at hand. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving licence under the Motor Vehicles Act.

9. In the result, the appeal is allowed; the judgment of the High Court is set aside and the compensation awarded by the Commissioner is restored. There will, however, be no order as to costs.