

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9069 OF 2022

(arising out of Special Leave Petition (C) No. 32347 of 2018)

CHANDRAMMA

... APPELLANT(S)

VERSUS

MANAGER, REGIONAL OFFICE, NCC LIMITED AND ANR. ... RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave Granted.

2. The present appeal is directed against the final order dated 07.08.2018 passed by the High Court of Karnataka, Kalaburgi Bench (hereinafter referred to as "**High Court**") in Miscellaneous First Appeal No. 202250/2017 (WC) filed by the Appellant praying to call for the records and set aside the judgment and award dated 02.06.2017 passed by Additional Senior Civil Judge and Commissioner for Employees Compensation at Bidar (hereinafter referred to as "**Commissioner**") in E.C.A No. 12/2016. The High Court partly allowed the appeal of the Appellant and assessed the income as Rs.8000/- per month and accordingly computed the compensation at Rs. 2,19,512/-.

3. Briefly, the facts relevant for the purpose of this appeal are as follows:

3.1 The Appellant was engaged in the construction of government hospital at Bidar, Karnataka. Respondent No. 1 was the contractor and undertook the construction of upgradation of the hospital building. On 22.07.2015, Appellant along with other laborers were attending the work of shifting the cement from ground floor to the second floor, the centering plate collapsed on the head of the appellant who fell down from second floor to the ground floor.

3.2 Subsequently, the appellant was taken to the hospital wherein it was established that she has sustained fracture of spinal bone and compound fracture on various part of the body. After preliminary treatment at government hospital at Bidar, the Appellant went to Gurupadappa Nagmarpalli Hospital and was admitted as inpatient. The appellant was informed by the Doctor that she would not be able to lift any kind of weight through rest of her life.

4. The appellant filed compensation application being E.C.A No. 12/2016 under Section 10 of Employees Compensation Act, 1923 (hereinafter referred to as "**1923 Act**") before the Commissioner seeking compensation of Rs. 20 Lakhs along with interest at 18% per annum from the date of accident. Vide judgment and award dated 02.06.2017, the Commissioner held that the Appellant has not proved that she was paid Rs. 600 per day as cooli and accordingly computed

notional income at Rs.6000/- per month. Further, it was held that the disability to the whole body is at 20% and as such assessed the compensation at Rs.1,32,600/-. Accordingly, the Appellant was held to be entitled for Rs.1,75,000/- as compensation.

5. Being aggrieved, the Appellant filed an Appeal under Section 30(1) of the 1923 Act before the High Court praying to call for the records and set aside the judgment and award dated 02.06.2017. Vide final order dated 07.08.2018, the High Court partly allowed the appeal. The Operative portion of the order reads as under: -

“Heard both the learned counsel. The relationship between the employee and employer has not been disputed. The only grounds taken by the counsel for the employee is in respect of income. Though it was the case that the income of Rs. 8,000/- is to be accepted, the same is disbelieved and the commissioner has assessed the income at Rs. 6,000/- per month which is lower in side. Though it is claimed that the respondent has not seriously disputed the income of the claimant, under these circumstances, the claimants are entitled for enhanced income of Rs. 8,000/-. Accordingly, same is to be assessed. As per Section 4(1)(b) of the Employees Compensation Act 1993, 60% of the monthly wages of injured employee has to be multiplied by relevant factor 184.17 which is applicable to the age of 40 years. Accordingly, calculation is Rs. 8,000/- X 60% = Rs. 4,800/-. Hence Rs. 4,800 X 184.17 which comes to Rs.8,86,560/-. PW2 the doctor’s evidence is that injured suffered 20% disability to the whole body and Tribunal assessed the disability at 20%. Hence the calculation is Rs.8,86,560 X 20%, which comes to Rs.1,77,312/- and same is awarded. Order of the E.C. Commissioner stands modified. Enhanced amount carries interest. Medical expenses of Rs. 42,200/- as ordered by the Commissioner is retained. In

total, the compensation would be Rs.2,19,512/- the same is awarded. Order stands modified. Appeal is partly allowed.”

6. We have heard Mr. Shankar Divate, Learned Counsel appearing on behalf of the Appellant and Mr. Parijat Kishore, Learned Counsel appearing on behalf of the Respondents.

7. Mr. Shankar Divate, Learned Counsel for the appellant vehemently submitted that the Courts below failed to note that the petitioner suffered spinal injury and the doctor had clearly and categorically observed that professional disability is 100%. It was further submitted that the minimum wages as fixed under the Workmen Compensation Act cannot be lower than the actual wages earned by a laborer and that the courts below ought to have granted the compensation on the basis of the actual earning capacity and the appellant is permanently disabled from working as labour at construction sites. It was also submitted that the appellant was doing the construction work and given the injury suffered by the petitioner, she would not be able to do any other work by which she can earn her livelihood, therefore, the grant of compensation of Rs.2,19,512/- for permanent disability is inadequate and deserves to be enhanced.

8. Per contra, Learned Counsel for the Respondents urged that the grant of compensation awarded by the High Court is adequate and requires no interference by this Court.

9. We have carefully considered the rival contentions of the learned counsel appearing for the parties and perused the entire records. The issue involved in the instant matter primarily relates to the determination of quantum of compensation awarded under various heads by the Commissioner and the High Court.

10. Before advertng to the merits of the case, it is necessary to analyse the meaning of compensation awarded in cases where the victim has suffered permanent partial disability. In common parlance, compensation is often described as "*something, typically money, awarded to someone in recognition of loss, suffering or injury*". Under the Workmen's Compensation Act, 1923, it is mandatory for the employers to pay compensation to their employees or workmen for a work-related accident, fatality, injury, or illness. The Objective of the 1923 Act is two-fold. First, it enables employees and their dependents to get compensation from their employers in case an accident causes an employee's death or disability; second, it mandates employers to pay compensation to their workers if they contract certain job-related illnesses or

diseases.

11. In relation to the above objective, it is essential to advert to Section 3 of the 1923 Act which states that an employer is liable to pay damages to its workers under the following conditions:

- i. If a worker has an occupational disease mentioned under Part A, B, C of Schedule III. The disease has to be a result of an injury by accident during work hours.
- ii. An injury sustained by an employee during work that leads to total or partial disability
- iii. Death of an employee due to a work-related hazard.

12. Ideally, the compensation should be provided to the employees against the hazards of employment to which an employee is exposed. This also includes any occupational disease or industrial accident that the employee may encounter arising out of or during the course of employment which leads to disability or death. Specifically, a worker is entitled to compensation in case of

- i. Death
- ii. Permanent Total Disablement
- iii. Permanent Partial Disablement
- iv. Temporary disablement- both total and partial
- v. It has contracted an occupational disease.

13. Disablement is a wide term and under the 1923 Act, it is divided into two categories ie., Partial disablement and total disablement. According to Section 2(1) (g) of the Act '**Partial Disablement**' means, where the disablement is of a temporary nature, such disablement reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. Thus, Section 2(1) (g) classifies partial disablement into two kinds, namely, (a) Temporary partial disablement and, (b) Permanent partial disablement.

13.1 The distinction between the two types of partial disablement depends on the fact whether the disablement results in reduction of earning capacity in the particular employment in which he was engaged at the time of the accident or in all employment which the employee was capable of doing. In the former case the partial disablement is called temporary and in the latter case permanent. Every injury specified in Part II of Schedule I of the Employees' Compensation Act shall be deemed to result in permanent partial disablement.

14. Whereas, "**Total Disablement**" is defined under Section 2(1)(l) to mean 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

accident resulting in such disablement and every injury specified in Part I of Schedule I or combination of injuries specified in Part II of Schedule I where aggregate percentage, as specified in Part II against those injuries amounts to 100% or more. Total disablement is of two types-:

- i. Temporary Total Disablement- In temporary total disablement the earning capacity of a workman is lost for a temporary period, for all work which he was capable of performing at the time of accident.
- ii. Permanent Total Disablement- Total permanent disability (TPD) is a condition in which an individual is no longer able to work due to injuries. Total permanent disability, also called permanent total disability, applies to cases in which the individual may never be able to work again.

15. Taking the type of disability into concern, just compensation should be awarded to the person aggrieved. "***Just Compensation***" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face

their lives. Under Section 4 of the 1923 Act, the amount of compensation an employer has to provide workers is as follows:

- i. **Death of the worker:** 50% of the worker's monthly wages multiplied with relevant factors; or ₹1,20,000, whichever is more.
- ii. **Permanent Total Disability:** 60% of the monthly wages, multiplied by relevant factor; or ₹1,40,000, whichever is more.
- iii. **Permanent Partial Disability:** In such cases, the amount payable is a percentage of the loss of earning capacity due to the injury. These injuries are mentioned in Part II of Schedule I of the Act.
- iv. **Temporary Disability:** 25% of the employee's monthly wages.

16. A three-Judge Bench of this Court in *Raj Kumar Vs. Ajay Kumar and Another*¹ categorically assessed the assessment of future loss of earnings due to permanent disability. The operative portion of the judgment reads as under: -

"9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent

¹ (2011) 1 SCC 343

disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

12. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

- (i) whether the disablement is permanent or temporary;
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. **The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.**

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not find suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

17. In the case at hand, the appellant is a skilled labour, who was involved in the work of construction of hospital building. On 22.07.2015, the appellant fell down from second floor to ground floor when the centering plate collapsed on her head. It is pertinent to mention that doctors who treated the appellant have held that she sustained fracture of spinal bone and compound fracture on various parts of the body. Appellant herein, contended that the contractor had not provided any safety gears, instead he allowed the labourer to take the cement on the head. The negligence of the contractor lead to appellant's

permanent partial disablement. The commissioner computed the income of the appellant as follows: -

“14. According to Section 4(1)(b) of the Employees Compensation Act, 1993, 60% of monthly wages of the injured employee has been multiplied by relevant factor. Hence in view of the said provision, the compensation is calculated (Rs. 6000 X 60/100 = Rs. 3600/-). The age of the claimant is 40%, it should be multiplied by relevant factor is 184.17. It comes to Rs. 6,63,012/. The PW-2 had opined that, there is 26% of disability to the whole body. But i feel it proper to consider the whole-body disability @ 20% (Rs. 663012 X 20(permanent disability)/100 = Rs. 1,32,602/-). It is rounded off to Rs. 1,32,600.

15. The petitioner is not entitled for compensation in any other conventional head. The petitioner had produced medical bills of Rs. 42,200/- issued by United Hospital and Gurupadappa, Hospital. As per Section 4 2 (A) Employees Compensation Act, the medical expenses should be reimbursed. Hence, in the entire petitioner entitle for Rs. 1,74,800/. It should be off to Rs. 1,75,000 as compensation from respondent no. 2.”

Further, the appellant filed an appeal before the High Court seeking enhancement of compensation and same was allowed in part. The High Court enhanced the compensation to Rs. 2,19,512/- by assessing the income of the appellant at Rs. 8000/- per month.

18. Predominantly, it is to be noted that the appellant is suffering from permanent partial disablement which also implies that she will not be able to do anything manually such as unloading building materials or using hand tools like

shovels or picks or operating other machinery. Therefore, On the issue of disability, what is relevant is the statement of the Dr. Mallikarjun who examined the appellant for making an assessment of the disability. The disability report showed that there is Permanent Partial Disability of about 58% of the limb, which corresponds with 26% whole body.

19. There is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated her from doing the work which she was capable of doing. The said work was of that of a laborer. Therefore, the Commissioner for Workmen's Compensation was wrong in holding that the disability of the appellant will have to be treated as 20% disability as the work of an appellant involves lifting heavy weights and the appellant has been rendered incapable from doing such work due to her disability. Hence, the case of the appellant will be covered by the definition of 'total disablement', therefore, being 100% disabled.

20. Thus, it is an admitted position that the appellant can no longer pursue the work of a labourer. This Court in ***Raj Kumar Vs. Ajay Kumar (Supra)*** held that:-

"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant

could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. *For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.*

15. *It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation*

separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

(emphasis supplied)

21. Similarly, in the case of **K.Janardhan Vs. United India Insurance Co. Ltd. & Anr.**², this Court held that :-

“The loss of earning capacity in the case of tanker driver who had met with an accident, and lost one of his legs due to amputation. The commissioner for Workmen’s Compensation assessed the functional disability of the tanker driver as 100 % and awarded compensation on that basis. The High Court, however, referred to Schedule 1 to the Workmen’s Compensation Act, 1923, and held that loss of a leg on amputation resulted in only 60% loss of earning capacity. This Court set aside the judgment of the High Court, and held that since the workman could no longer earn his living as a tanker driver due to loss of one leg, the functional disability had to be assessed as 100%.”

22. This Court in the case of **S.Suresh Vs. Oriental Insurance Co. Ltd.& Anr.**³, held that :-

“9. 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

2 (2008) 8 SCC 518
3 (2010) 13 SCC 777

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, 1988.”

(emphasis supplied)

23. Having considered the aforesaid facts of the present case and the dictum of the judicial pronouncements referred to above and the position of the appellant after the accident, incapacitated her from carrying out her vocation as a labourer, we are of the opinion that the impugned order passed by the High Court is not liable to be sustained. The functional disability of the appellant is liable to be assessed as 100% and, accordingly, the compensation is to be determined. The functional disability of the appellant being 100%, her age being 40 years and income being Rs.8000/-, 60% whereof works out to be Rs.4800/- and applying the multiplier of 184.17, as per Schedule IV of the 1993 Act, the compensation works out to be Rs.8,84,016/-. Adding an amount of Rs.42,200/- towards medical expenses for which the bills were presented, the total compensation works out to be Rs.9,26,216/- rounded off to Rs. 9,30,000/-. The appellant shall also be entitled for payment of interest @ 9% per annum, from the date of making the application till the date of actual payment.

24. The respondent Insurance Company is directed to pay the enhanced amount of compensation to the appellant along with 9% interest, calculated from the date of making of the application till the date of payment within six

weeks from today.

25. The Civil Appeal stands allowed in the aforesaid terms. All the pending applications, if any, are accordingly disposed of. Ordered accordingly.

.....,J
(KRISHNA MURARI)

.....,J.
(S. RAVINDRA BHAT)

NEW DELHI;
09TH DECEMBER, 2022