

Karnataka High Court Oriental Insurance Co. Ltd. vs Tajuddin Abdul Rahim Karanche on 31 January, 1995 Equivalent citations: 1995 ACJ 837, (1996) II-ILLJ 1016 Kant Author: M Saldanha Bench: M Saldanha JUDGMENT M.F. Saldanha, J. 1. This is an Appeal preferred by the Oriental Insurance Company Limited and it raises issues of some consequence particularly in view of the grievance projected that due to absence of specific guidelines and parameters which are to be defined by this Court, that indiscriminate orders are being passed in compensation proceedings under the Workmen's Compensation Act, the total absence of any standards with regard to the manner in which the compensation is being assessed has resulted in some runaway orders, and it is therefore imperative that the methodology to be adopted by the authority to be specified. The present case is one more instance where an order has been indiscriminately passed, without any reason having been specified meaning thereby reasons that pass legal sanction. That the claimant may have sustained some injuries and therefore qualifies for compensation is not disputed by the Insurance Company but what is basically contended, and to my mind with considerable justification is that the compensation must be fair and more importantly, correct. If the compensation awarded is higher than what is legitimately done, the order would require rectification, but I do see considerable justification in the submission advanced by the learned Counsel who represents the appellants when he points out to this Court that if specific guidelines are laid down, and if the authorities are directed to observe these guidelines, that the scope for grievance itself will stand considerably reduced apart from the unnecessary backlog that it would eliminate. What is important is that the scope of the appeal would be limited only to cases where the authority has genuinely gone wrong. The Insurance Companies are burdened to some extent because even a wrong order entails the requirement of having to deposit the whole of the amount awarded and it is precious little justification that some of it may be returned after about a decade or more. 2. Mr. Shankar, learned Counsel who represents the appellants has drawn my attention to Section 4 of the Workmen's Compensation Act and in particular, to the provisions of Section 4(1)(c) of the Act both in its unamended and amended form. Since the issue is of some consequence, the provision of Section 4(1)(c)(ii) as also explanation to that Section are reproduced below : "Section 4(1)(c)(ii). In the case of any injury not specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury. Explanation (II): In assessing the loss of earning capacity for the purpose of Sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I." 3. To summarise, the contention put forward by learned Counsel, after the amendment, which obviously became necessary because of the unfortunate experience in such cases where the method of quantifying the compensation was left to the arbitrary discretion of the authority which varied from individual to individual like the proverbial Chancellor's Foot, the Legislature has now specified a more reliable and scientific method and that is to be

adopted by the authority concerned. In essence, what the law now prescribes after the amendment is that a qualified medical practitioner shall be required to assess not only the degree of disability but more importantly, the loss of earning capacity. These two terms are not synonymous and in fact would give rise to a lot of confusion. Mr. Shankar draws my attention to the Decision of the Supreme Court reported in *Pratap Narayan Singh Dev v. Srinivasa and Anr.* (1976-I-LLJ-235) whereby the Court had occasion to interpret certain Sections of the unamended Act and the Court while interpreting Sub-clause (i) of Section 2 thereof had occasion to observe that the consideration was with regard to the inability to do all work. On an analogy. Mr. Shankar points out that it is the reduced working capacity of the claimants that is required to be assessed and the Legislature has in its wisdom thought it fit that this will have to be done by a qualified medical practitioner. He draws support to his argument from a Decision of this Court reported in *Divisional Manager, KSRTC v. Bheemaiah* (1977-II-LLJ-531). The Court while considering the disability in the case of a bus driver which was such as to completely disqualify him from driving a bus, had occasion to observe that this did not amount to permanent total disability as the workman was capable of performing duties and executing works other than driving the motor vehicles. The Court on that occasion relied on the Decision reported in *General Manager, G.I.P. Railway, Bombay v. Shankar S/o Paltoo*. AIR 1950 Nagpur 201 Mr. Shankar therefore submitted that it is now an essential requirement after the law has been amended that the authority concerned is required to rely for purposes of quantification of the compensation on the percentage loss of earning capacity as assessed by the qualified legal practitioner and this necessarily pre-supposes that the authority cannot import his own notions, ideas or philosophy into the process of adjudication. 4. Learned Counsel has briefly summarised his contentions as follows:- (a) That the purpose of the amendment of the Workmen's Compensation Act in 1984 is in order to provide parameters and guidelines to the Workmen's Compensation Commissioner regarding quantification as regards loss of earning capacity and further to place the medical assessment of the injury about the mere discretionary power to the Workmen's Compensation Commissioner inasmuch as Explanation (ii) both qualifies and delimits the process of computation of loss of earning capacity. (b) The Workmen's Compensation Commissioner does not have unfettered discretion in elevating a non schedule injury to Part I or Part II of Schedule I and this is question of jurisdiction in relation to which, the interference of this Court is sought as it is pure point of law.

- (c) The Workmen's Compensation Commissioner does not have a free play in overruling gravity of the injuries and determining the loss of earning capacity.
- (d) The assessment of a Medical Practitioner is not of disability but in fact constitutes an assessment of the loss of earning capacity which is circumscribed by Explanation (2).

- (e) The Workmen's Compensation Commissioner has the discretion to discard medical evidence in the event of the Explanation (II) being ignored.
5. The appellant's learned Advocate has argued in some detail that the provisions of this Act have come up for interpretation in a large number of cases, some of which I shall deal with in the course of which, the Courts have had occasion to lay down certain principles. When any injury has occurred, the aggrieved party invariably has a tendency to claim an amount higher than what is legitimately due, and having done so may try to substantiate this claim through whatever evidence is possible, the commonest situation being where the employee contends that even though the injuries may have healed superficially that the effects are still crippling or where the contention is raised that the employee incapable of working wholly or partially. Mr. Shankar submits that the obligation to compensate under the provisions of the Act is in relation to the gravity of the damage that has resulted due to the injury both in the short term and possibly in the long term in certain cases. As a result of leaving the overall computation to the authority constituted under the Act, a situation was developing whereby the applicant would first work up a very high degree of sympathy in the mind of the authority and would then grossly exaggerate the nature and consequences of the injury all the while, keeping the medical evidence which is crucial to the very minimum. Even in the face of Doctor's evidence that the level of disability was of a relatively low order, the argument was invariably advanced that the authority must on the basis of other considerations still hold that the capacity to earn has been depleted to a much larger extent. In this regard, Mr. Shankar submitted : that Courts were prevailed upon to take decisions in cases where the injured person was a machine operator or drove a motor vehicle, that the loss of a finger or toe should be regarded as total disability because the workman could not thereafter operate a machine or drive a motor vehicle. It is his submission that in order to rationalise the situation, the amendment of 1984 was brought in after which the law has made it obligatory for the authority to be circumscribed by the assessment to be done by a qualified Medical Practitioner. Explanation II requires that while doing this assessment, the qualified Medical Practitioner shall have due regard to the loss of earning capacity in relation to different injuries specified in Schedule I. Mr. Shankar submits therefore that the quantification of the compensation is not left completely to a simple discretion of the learned trial Judge but that the learned Judge in his turn is limited to the percentage parameters that are required to be indicated in the medical evidence.
6. The respondent's learned Advocate seriously assailed this submission. In the first instance, he draws my attention to a Decision of the Bombay High Court reported in *S. V. Parekh v. Sikandar Jou.* (1984 II-LLJ - 90). The learned Judge in that case held that the loss of earning capacity has an intimate relation with the nature of work the workman was doing or was capable of doing at the time of the accident. The learned Judge went

on to hold that even the percentages indicated in the Schedule of the Act are to be treated as the minimum for purposes of award of compensation and that the discretion existed in the authority to exceed this minimum. The principle laid down by the Court is of some consequence but one must remember that the Court was dealing with a different situation as also, that it was the unamended Act that was before the Court. Drawing from this principle however, the respondent's learned Advocate submitted that the provisions of the Act are to be construed for purposes of evaluating the lower limits of compensation and that it is open to the applicant for special reasons to pray for a much higher amount. In support of this submission; he drew my attention to a decision of the Gujarat High Court reported in P.K. Parmer (1985-I-LLJ-98). That was a case in which a driver suffered disability of the right hand finger, elbow and right thigh as a result of which he was rendered unfit as a driver. On the basis of the medical evidence, the compensation awarded was to the extent of 70% which was the level of disability indicated by the medical evidence. The Court held that in the circumstances of the case the disability was total and enhanced the compensation. In a similar case, reported in P.N. Singh Deo v. S. Sabata and Anr. 1976 ACJ 141 where a carpenter lost his left arm above the elbow, the Supreme Court held that the disability suffered was total and not partial in so far as it was impossible for him to do any carpentry work with one hand; It was therefore submitted, that the overall effect of the injury from the point of view not of the degree of physical impairment but from the angle of computing as to how that impairment, even if not totally, can curtail the applicant's capacity to earn, is the real criterion and not the percentage assessment as done by the lower Court.

7. Another argument advanced by the respondent's learned Advocate in order to meet the submission canvassed by Mr. Shankar is that the Court must take into account the fact that several alternatives are available and therefore, even if the original job can no longer be performed in totality, that it was not to be qualified as a 100% disability case. The respondent's learned Advocate drew my attention to a Decision of the Kerala High Court reported in George v. Tankan, 1980 ACJ 318, wherein, after the loss of an index finger the workman was able to secure alternate employment and the submission was canvassed that the would not qualify for compensation, the Court held that the compensation was still payable in so far as the Act prescribed for such a payment in relation to the injury and that securing of a suitable alternative would only minimise the claim from the angle of long term loss. The appellants' learned Advocate then drew my attention to a very unusual situation that had arisen before the Calcutta High Court in a Decision reported in Calcutta Licensed Measurers v. Md. Hussain 1969 ACJ 92. He pointed out to the Court that the workman who had suffered injuries to his left leg and hip which resulted in permanent partial disablement was able to secure other employment on compassionate grounds and a curious situation arose before the Court because it was demonstrated that as a result thereof, he was earning more

after the accident than before the injury took place. The argument was advanced that the applicant was disqualified from any compensation because even though he had contended that on paper there was a loss of earning capacity, that in actual fact that there was an increase in his emoluments. The Court rejected the argument and made a very telling distinction that on the unusual facts of this case, earnings would have to be distinguished from earning capacity, the reason for this being that though a normal loss of earning capacity had been established since as a measure of grace and of compassionate grounds somebody had helped out the applicant, that this factor could not totally disqualify him though it would have some bearing on the quantum awarded. In sum and substance, the respondents' learned Advocate have submitted that the principles laid down by the Courts in these cases are still good law and that it is incorrect to contend that as a result of the amendment, the authority is totally subjugated to the medical evidence.

8. In his reply Mr. Shankar has drawn my attention to the Decision of the Kerala High Court reported in U.I.I.C v. Sethumadhavan (1993-I-LLJ-142), wherein, the Court relying on the two Decisions of the Calcutta High Court reported in Kalidas Ghosal v. S.K. Mondal . and Commissioner of Port of Calcutta v. Ajit Kumar Ghosh 1970 ACJ 320, upheld a case covered under Sections 4(1)(c)(iii) of the Act wherein the Commissioner did not accept the percentage of disability as certified by a qualified Medical Practitioner. Basically the Court proceeded on the footing that disablement cannot necessarily be equated with loss of earning capacity. The Court also took notice of the fact that under Section 20(iii) of the Act, the Commissioner can take the assistance of an expert and concluded that the ultimate adjudication is required to be done by the Commissioner who is the authority invested with the requisite powers under the Act and that these powers cannot be subordinated to the medical evidence that is produced. As against this Mr. Shankar drew my attention to a later Division Bench Decision also of the Kerala High Court which is a Decision reported in Achoor Estate v. Nabeesa (1994-II-LLJ-969), wherein the Court had occasion to consider the Case Law at length as also in the case of United India Insurance Company v. Sethumadhavan (supra) and concluded that in the case of a non-scheduled injury, though formally a Commissioner was required to decide the loss of earning capacity on the basis of medical evidence, where there are special reasons to dispense with the Medical Certificate that the order will not be vitiated. The Court did however observe that primarily, the loss of earning capacity is to be assessed by a qualified Medical Practitioner. Learned Advocate submitted, that in the ultimate analysis rational and judicial balance will have to be maintained while assessing the quantum of compensation and that it is for this purpose, that the legislature has pegged the amount on the basis of the medical evidence.
9. I do share the view, as pointed out by the appellant's learned Advocate, that it is very necessary for this Court to lay down very clear and concise

guidelines in these cases because experience has shown that the authorities constituted under the Act have been, by and large awarding compensations which has hardly any relation to the nature of the injury but above all, the loss of earning capacity. What has compounded the situation is that in the majority of these cases where the huge amount of compensation awarded is required to be deposited as a condition precedent for filing the appeal, the amount is straightaway released to the applicants before the Appellate Court can pass orders and in a large number of instances, despite orders passed by this Court for a recovery, the amounts have become irrecoverable. From the quantum of compensation awarded and the undue haste in disbursing it, this Court is required to conclude that there is much substance in the grievance canvassed by the appellants that all is not well and that there is more to it than meets the eye in what is going on. While an injured person is entitled to receive compensation and that too within a reasonable period of time this process is not to be used as an exploiting channel or for the share of windfall gains and this Court will be required to take serious action unless the guidelines laid down in this judgment are scrupulously followed.

10. The principles that emerge on the basis of a consideration of the law and the effect of the amendment of 1984 can briefly be summarised in the position that although undoubtedly, the accent is heavily on the medical evidence it is true as pointed out by the Division Bench of the Kerala High Court that this evidence is not sacrosanct and that the Commissioner is not to be relegated as being required to mechanically follow the opinion of the Doctor. The correct way to interpret the Section would be that the absolute discretion of the Commissioner is now curtailed to a very large extent in so far as he will have to gauge the loss of earning capacity strictly on the basis of the assessment done by the Medical Expert. For this purpose, both the claimants and the respondents but more importantly, the Court, will take into account that the old practice or merely producing a Medical Certificate with a rough estimate of disability no longer holds good. It will be necessary to lead medical evidence through the medium of a person who can be regarded as a qualified Medical Practitioner and that this Doctor will have to be specifically informed about the job functions of the applicant and the bearing that the injury will have on these functions. Equally necessary, the Doctor will have to specifically depose about the short term and long term effect of the injury but more importantly, as to how it will affect the present job and the potential earning capacity in any other or alternate areas of employment. This evidence is crucial and is essential. Regardless of whether the parties on their own accord follow these principles, the Commissioner shall take into account the fact that the law requires this procedure to be adopted and shall ensure that it is done. Once this formulae is adopted, the Court will have before it very clear and reliable evidence and it is on this basis that the quantum of compensation will have to be fixed. If there are extremely cogent and genuine grounds on which a departure has to be made from the evidence adduced by the

Doctor, such as in a situation where the opinions differ when more than one Doctor is examined or where the applicant or the employer produce far better material the Commissioner will not be precluded from making some departure from the medical evidence. The amendment of 1984 creates a situation whereby the Commissioner is required to go by this evidence or keep close to it and the Commissioner is therefore not permitted to make any radical departure from that evidence. In a given situation, if the Commissioner is dissatisfied with the evidence of one Medical Expert, it will certainly be open to seek further and better evidence.

11. In the light of the experience that have been reported to this Court it is necessary to prescribe that as far as the compensation amounts that are deposited in the courts are concerned, that the Commissioner shall be required to wait until the Appeal period has elapsed and in order to avoid scope for any grievance, before the compensation amount is disbursed, issue notice to the respondents in order to ascertain as to whether an Appeal has been filed and if so, what are the orders passed by the Appellate Court. This last direction shall be strictly observed.
12. The Appeal filed in this case is partially allowed in the circumstances set out in this Judgment. On behalf on the appellants it is contended that the applicant respondent would only be entitled to compensation quantified at Rs. 18392/- as the Doctor had assessed a disability of 20 percent. Since the position in law has now been clarified, the amount deposited in court shall be retained by the authority for the time being. The parties are afforded the opportunity of leading further evidence if they so desire for which purpose, the matter shall stand remanded to the trial Court at Belgaum before whom the parties are directed to appear on April 17, 1995. The authority shall afford the parties an opportunity of leading further evidence if they so desire, thereafter hear the learned Advocates and shall re-determine the compensation in the light of the guidelines laid down in this Judgment. As far as the rate of interest is concerned, a submission was advanced on behalf of the appellants that it should be fixed at 6%. I am not inclined to uphold this argument having regard to the prevailing economic conditions and that shall therefore be left to the discretion of the authority depending on the circumstances of each case. The Appeal accordingly succeeds and stands disposed of.
13. The appellants' learned Advocate points out that having regard to the importance of this case the fact that indiscriminate orders are still being passed and that the compensation amounts are being released often times in total violation of the orders passed by the High Court, that a copy of this judgment be directed to be circulated to all the authorities exercising powers under the Workmen's Compensation Act in the State of Karnataka. The Registrar shall ensure that this is done. In view of the remand in this case, the authority shall forthwith return to the Insurance Company the balance of the money deposited under the earlier order, which is still remaining with the, authority after the part of the amount had been withdrawn by the original applicants. If the authority

comes to the conclusion that any additional amount is still payable, fresh orders to that effect may be passed after hearing the parties.