

Karnataka High Court National Insurance Company Ltd. vs R. Vishnu And Anr. on 19 February, 1991 Equivalent citations: I (1992) ACC 30, 1992 ACJ 590, 1991 (2) KarLJ 125, (1994) IILLJ 635 Kant Author: R Jois Bench: M R Jois, K J Shetty JUDGMENT Rama Jois, J. 1. In this appeal presented under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the 'Act'), the following three questions of law arise for consideration:- 1. Whether the objection that the Workmen's Compensation Commissioner, Bangalore, had no jurisdiction to entertain the claim arising out of personal injury suffered by the first respondent in a motor accident which occurred at Nasik in the State of Maharashtra could be permitted to be raised in the appeal for the first time and whether the order of the Commissioner is liable to be set aside on such objections ? 2. Whether the Workmen's Compensation Commissioner has no jurisdiction to award compensation higher than what is asked in a claim petition presented under Section 10 of the Act even though according to law the claimant is entitled to a higher rate of compensation ? 3. Whether the extent of permanent disability suffered as specified in the Schedule to the Act is a bar for pleading and proving that actually the concerned employee had suffered higher percentage, of, or total, disability ? 2. The brief facts of the case are these: The first respondent was employed as a driver of a tourist bus, by the 2nd respondent who is having his place of business at Tumkur. On 6.5.1986 when the first respondent was driving the vehicle near Nasik in the State of Maharashtra, he met with an accident in which his both legs were injured and finally his left leg was amputated below the knee. The first respondent filed a claim application under Section 10 of the Act before the Workmen's Compensation Commissioner, Bangalore, claiming a compensation of Rs. 75,000/-. After recording evidence, the Commissioner came to the conclusion and recorded a finding that the first respondent had suffered total permanent disablement, and awarded a compensation of Rs. 92,085/-. Aggrieved by the said order the appellant Insurance Company has presented this appeal. 3. Sri H.G. Ramesh, learned counsel for the appellant urged the following contentions: (i) In view of Section 21 of the Act, the claim for compensation ought to have been filed before the Workmen's Compensation Commissioner, Nasik and after entertaining the said application he could have transferred it to the appropriate Workmen's Compensation Commissioner, (ii) The first respondent had claimed a compensation of Rs. 75,000/- only in the application and therefore the Workmen's Compensation Commissioner had no jurisdiction to grant the compensation higher than the claim. (iii) As the left leg of the first respondent was amputated below the knee, according to the Schedule of the Act the permanent disablement was only to the extent of 50 per cent but the Workmen's Compensation Commissioner had proceeded on the basis that the first respondent suffered total disablement and accordingly awarded a compensation of Rs. 92,085/-, which was impermissible. 4. In view of the aforementioned contentions, the questions set out in the first para arose for consideration. 5. Coming to the first question relating to the jurisdiction, Sections 20 and 21 of the Act are relevant and they read:- "20. (1) The State Government may, by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be

specified in the notification. (2) Where more than one Commissioner has been appointed for any area, the State Government may, by general or special order, regulate the distribution of business between them. (3) xxx xxx xxx (4) xxx xxx xxx 21 (1) Where any matter is under this Act to be done by or before a Commissioner the same shall; subject to the provisions of this Act and to any rules made hereunder, be done by or before a Commissioner for the area in which the accident took place which resulted in the injury: Provided that, where the workman is the master of ship or a seaman any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business. (2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings; provided xxx xxx (3) xxx xxx xxx According to Sub-section (1) of Section 10 of the Act, the State Government is empowered to appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification. According to Sub-section (2) thereof, if more than one Commissioner is appointed for the same area, then, it is also competent for the State Government to specify and regulate distribution of business among the Workmen's Compensation Commissioners. Learned Counsel for the appellant contends that in view of Sub-section (1) of Section 21, an application for compensation under the Act has to be filed only before the Commissioner for the area in which the accident took place and therefore the application should have been filed before the Commissioner at Nasik. He however does not dispute that if such an application had been filed before the Commissioner at Nasik, he could have transferred it to another Commissioner either for report or for disposal. 6. Even on the basis that in view of Section 21(1), the application could have been filed only before the Commissioner at Nasik, and it was filed, there, in view of Sub-section (2), he could have transferred it to any other Commissioner on the request made by the parties that it was convenient for them. In the present case though the application was not filed before the Commissioner at Nasik and it was filed before the Commissioner for Bangalore area, the appellant did not object to the same. Therefore, when both the parties have got the claim adjudicated by the Commissioner for Bangalore area, the appellant cannot be permitted to raise it in the appeal, for it is not a case of total lack of jurisdiction, but was only a procedure irregularity in that in not filing the application before the Commissioner at Nasik and getting it transferred to the Commissioner for Bangalore. In this behalf the ratio of the decision of the Supreme Court in Pathumma and Ors. v. Kunkalan Rutty and Ors. is opposite. In the said case the Supreme Court held that objection regarding territorial jurisdiction of a Court should be raised at the earliest point of time and if no such objection had been raised before

the Court below, such objection should not be entertained by an appellate or revisional Court unless the objection so taken in the Court of first instance and it was taken at the earliest possible time or there had been a failure of justice. The said decision was in relation to the objection regarding the jurisdiction of the Court. But, in our opinion, the ratio of that decision applies with equal force to the objection regarding territorial jurisdiction of a Tribunal or Authority also. Admittedly in the present case no such objection was raised either in the statement of objection or at any time before the matter was disposed of by the Workmen's Compensation Commissioner, Bangalore. We are also satisfied that there is no failure of justice on account of the Workmen's Compensation Commissioner, Bangalore, entertaining the application for the reason that both the parties have effectively participated and prosecuted their case diligently. For these reasons we answer the first question as follows:- The objection that the Workmen's Compensation Commissioner, Bangalore, had no jurisdiction to entertain the claim arising out of personal injury suffered by the first respondent in a motor accident which occurred at Nasik in the State of Maharashtra, could not be permitted to be raised in the appeal for the first time and the order of the Commissioner is not liable to be set aside on such objection. 7. The next question for consideration is whether the Workmen's Compensation Commissioner had the jurisdiction to award compensation, higher than the one prayed for in the application. It is not disputed that in the application the first respondent had claimed only Rs. 75,000/- as compensation but the Commissioner awarded a compensation of Rs. 92,085/-. It is not the case of the appellant that the amount of compensation awarded is more than what is provided for in the Act. In our opinion, the amount of compensation which could be and has to be awarded by a Commissioner is what is provided for in the Act. For instance, if in a given case, the claimant does not quantify the amount of compensation but has stated as to the type of employment injury he suffered and makes a prayer for awarding compensation in accordance with law, it is for the Commissioner to quantify and award the compensation in accordance with the provisions of the Act. It should be noted that an application filed before the Workmen's Compensation Commissioner under the Act, which is a social security measure, cannot be equated to a plaint before the Court. Once application is filled with necessary details, quantification of the compensation is the duty of the Commissioner and he has to do it in accordance with law. Therefore, if in a given case, as has happened in this case, even though the claimant had asked for lesser amount, after proper adjudication when the Commissioner finds that higher compensation than what was asked for, has to be awarded, he has not only the power but also the duty to award such higher compensation. Therefore, we answer the second question as follows: The Workmen's Compensation Commissioner has jurisdiction to award compensation higher than what is asked for in a claim petition presented under Section 10 of the Act, if according to law the claimant is entitled to a higher compensation than asked for in the application. 8. The last question for consideration is whether the Commissioner was right in the present case in proceeding on the basis that the first respondent had suffered permanent disablement. "Amputation below knee" is specified in

Schedule I, Part-II of the Act (List of injuries deemed to result in permanent partial disablement), In view of Item No. 20 therein, learned counsel for the appellant submitted that as in the present case the amputation was below knee, the percentage of loss of earning capacity was 50% and therefore the compensation should have been awarded on the said basis but actually the Commissioner has awarded compensation on the basis that the disability was cent per cent. As far as this question is concerned, the matter is covered by our Judgment in *Siddapp v. General Manager K.S.R.T.C.* ILR 1988 (1) Karnataka 136. In the said decision, this Court has explained the scope of extent of percentage of loss of earning capacities specified in Part-II of the Schedule and has pointed out that the extent of permanent disablement specified therein should be deemed to have been taken place in the instances specified in Column 2 of the Schedule. In other words, this Court pointed out that in the case of specified instances given in the Schedule, without any proof, the percentage of loss of earning capacity as specified in the Schedule should have accepted and compensation should be awarded on that basis, but a claimant is not debarred from proving that he had suffered higher percentage of loss of earning capacity. In the said case also it was a case of a driver and we held that when there was amputation of hand to whatever extent, he became totally disabled for the employment as a driver and therefore in such cases the permanent disablement was cent per cent. The ratio of the said Judgment applies with equal force to this case also, as in this case the first respondent was the driver of the vehicle and his left leg was amputated below the knee and as a result he became totally disabled from continuing in the employment of the second respondent. To the same effect is the ratio of the decision of the Supreme Court in *Pratap Narain Singh Deo v. Srinivas Sabata and Anr.* : 1976-I Lab LJ 235, For these reasons we answer the third question as follows:- The extent of permanent disability suffered as specified in the Schedule to the Act is not a bar for pleading and proving that actually the concerned workman had suffered higher percentage of or total, disability. 9. Sri Ramesh, learned counsel for the appellant, however relied upon Section 2(g) of the Act which defines the expression “partial disablement”, which reads:- “Partial disablement” means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman 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 the time; provided that every injury specified in Part-II of Schedule I shall be deemed to result in permanent partial disablement“. The learned counsel submitted that the disablement could be regarded permanent in nature if such disablement reduces his earning capacity in every employment which he was capable of undertaking at that time. 10. In our opinion, the definition in no way advances the case of the appellant to any extent. The question as to whether a particular claimant has suffered partial disablement or total disablement should depend upon the nature of employment and further, it in a given case an alternative employment, is given by the same employer, that factor can be taken into account. As far as this case is concerned it is not the case of the appellant that

he has given any alternative employment to the respondent. Therefore, on the facts we are satisfied that the first respondent was employed only as a driver of a tourist vehicle and on account of the amputation of his left leg below knee, he became totally disabled from continuing the employment under the second respondent and therefore the Commissioner was right in holding that the first respondent suffered permanent total disablement and awarded compensation of Rs. 92,085/-. 11. Before concluding, we should place on record the submission made on behalf of the appellant that a sum of Rs. 25,000/-was paid by cheque during the pendency of this appeal and Anr. sum of Rs. 7,000/-had been paid to the first respondent earlier. Therefore we make it clear that the appellant is liable to pay only the balance of the amount. 12. In the result we make the following Order. The appeal is dismissed.