Indra Bai vs Oriental Insurance Company Ltd. on 17 July, 2023

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2023 INSC 624

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4492 OF 2023
(Arising out of SLP (Civil) No.138 of 20

INDRA BAI …

Versus

ORIENTAL INSURANCE COMPANY LTD.
& ANOTHER … Respondents

JUDGMENT

MANOJ MISRA, J.

1. Leave granted.

2. This appeal assails the judgment and order of the High Court of Madhya Pradesh at Jabalpur (in short, "the High Court"), dated 31.10.2022, in Misc. Appeal No. 2369 of 2003, whereby the High Court partly allowed the appeal preferred by Oriental Insurance Company Ltd. (R-1 herein) against the order of the Workmen's Compensation Commissioner/Labour Court, Jabalpur dated 03.09.2003 passed in Case No.134/2002/WC/Non- Fatal and, thereby, reduced the compensation awarded to the appellant from Rs.3,74,364/- to Rs.1,49,745.60/- by treating the permanent 16:27:13 IST Reason:

disability of the appellant as 40% in place of 100 %.

FACTS:-

3. The appellant was employed as loading and unloading labourer with M/s. Simplex Concrete Company (R-2 herein) for Truck No. MPF 7567, which was insured with R-1. On 03.10.2002, while the appellant was loading poles/pillars in that truck, the chain pulley broke and the poles fell on the left arm of the appellant resulting in a compound fracture of her left arm as well as damage to the nerves etc. By claiming that due to the injury, the appellant has suffered permanent total disablement, as there was no grip left in her left arm, compensation was sought from R-2. R-2

claimed itself to be insured with R-1 and requested the appellant to claim compensation from R-1. As no compensation was paid, the appellant filed petition before the Workmen's Compensation Commissioner (in short, "the Commissioner") under the provisions of the Workmen's Compensation Act, 1923, now known as "the Employee's Compensation Act, 1923" (in short, "the Act").

4. Before the Commissioner, R-2 did not dispute the facts set up in the claim petition, rather he claimed the benefit of insurance cover under a policy issued by R-1.

5. R-1 (the Insurer), though did not deny existence of an insurance cover in favour of R-2, took usual pleas to defeat the claim which need not be elaborated here, as there is no appeal by R-1 against the order of the High Court fastening liability on it under the insurance policy.

6. During the course of the proceedings before the Commissioner, the appellant examined herself.

She proved that, – she was working as a loading /unloading labourer of Truck No. MPF 7567, owned by R-2 and insured with R-1; on the fateful day while she was loading poles/pillars on the said truck along with other labourers, the chain pulley broke and the poles fell on her, resulting in severe injuries to her left hand; she was admitted to the hospital for a period exceeding 10 days and due to the injuries sustained in that accident, her left hand has become completely ineffective because of no movement in the fingers of her left hand on account of nerve damage. Various documents including salary certificate (Exh. P-5), discharge card (Exh. P-7) and disability certificate issued by Medical Board (Exh. P-8) were produced to support her claim.

7. The appellant also examined Dr. Ravi Shankar Chowdhary, an Orthopaedist and a member of the District Medical Board (in short, "the Board"), who deposed that on 22.10.2002 the appellant gave an application to the Board to ascertain the percentage of her disability. Whereupon, she was examined and it was found that there was a compound fracture in her left arm and plates and screws were installed in her radial and ulna bone after operation, as a result, the fingers of her left hand had lost movement and the muscles had become thin. The doctor proved that a certificate indicating permanent disability to the extent of 50% with a declaration that she is unfit for labour work has been issued by the Board.

8. Neither R-1 nor R-2 produced evidence to rebut the evidence led by the appellant.

COMMISSIONER'S FINDINGS

9. The Commissioner upon consideration of the evidence on record found the appellant rendered permanently unfit to do labour work, which she was doing at the time of the accident. Accordingly, appellant's permanent disability was assessed as total.

10. Having assessed that the appellant had incurred permanent total disability, on finding that her age was 30 years and monthly wages were Rs.3,000/- at the time of the accident, the Commissioner computed the compensation payable in terms of Section 4(1)(b) of the Act as below:-

> "17. The age of applicant was 30 years at the time of the accident whose age factor is 207.98 as per Schedule IV of Section 4 of the Workmen's Compensation Act. Multiplying this age factor by 60% of the monthly salary of Rs. 3000/- given to the applicant by Rs. 1800/-, the total compensation amount is Rs. 3,74,364/-."

11. After computing the compensation, the Commissioner directed as follows:-

> "18. Therefore, the non-applicants are ordered to jointly and severally deposit an amount of Rs.3,74,364/- in this Court within 45 days from the date of this order. The non-applicants will be liable to deposit 9% interest from the date of this order for not depositing the compensation amount within the stipulated time."

12. Aggrieved by the order of the Commissioner, R-1 preferred appeal, under Section 30 of the Act, before the High Court.

FINDINGS OF THE HIGH COURT

13. The High Court did not disturb the finding of the Commissioner with regard to the entitlement of the appellant for compensation as also with regard to her age and monthly wages. However, the High Court assessed her permanent disability as 40% and thereby reduced the compensation awarded.

14. On the extent of permanent disability, the High Court noticed the certificate provided by the Board and observed:-

> "A perusal of the record reveals that claimant had produced certificate from District Medical Board, Jabalpur, Ex. P-8 dated 25.02.2003, whereby it is mentioned that claimant Smt. Indra Bai is an old case of compound fracture of left Radial Ulna with P.O. Plating and screw with contracture of fingers with wrist drop with monoparesis upper limb. Disability was certified at 50% with further stipulation that unfit for labour job."

15. The High Court also noticed the statement of the doctor who did the medical examination and observed:-

> "Dr. Ravi Shankar Choudhary was examined on behalf of the claimant, who deposed that it was a case of old compound fracture of radius and ulna bone, which was fixed through an operation by fixing plate and screw. In cross-examination, this witness admitted that except for her left hand, there is no disability in her body. She can carry out all the works which can be carried out by right hand."

16. The High Court considered the decision of this Court in National Insurance Co. Ltd. v. Mubasir Ahmed and Another1 to observe that if there is permanent partial disablement on account of injuries not specified in Schedule 1 then loss of earning capacity is not a substitute for percentage of physical disablement though it is one of the factors to (2007) 2 SCC 349 be taken into account. It also noticed another decision of this Court rendered in Oriental Insurance Company Ltd. v. Mohd. Nasir and Another2 to observe that the extent of disability is to be determined having regard to the facts and circumstances of the case but not in an arbitrary and illegal manner.

17. After observing as above and taking notice of a decision of the High Court, the High Court found that ends of justice will be met if 40% permanent disablement is taken into consideration for computing the compensation. Consequently, the High Court reduced the compensation awarded to the extent indicated above.

18. Aggrieved by the judgment and order of the High Court, the appellant has preferred Special Leave Petition under Article 136 of the Constitution of India.

19. On this petition, notices were issued on 13.01.2023 to the respondents 1 and 2 and it was directed that no recovery of any excess amount shall be made from the petitioner. As per the office report dated 05.04.2023, despite due service on the respondents, none has entered appearance on their behalf.

(2009) 6 SCC 280

20. We have heard learned counsel for the appellant and have perused the record. SUBMISSIONS OF THE APPELLANT

21. The learned counsel for the appellant submitted that, - firstly, appeal under section 30 of the Act is not to be entertained unless a substantial question of law arises. In absence of any perversity in the reasoning qua the extent of disability, it being a question of fact, the High Court erred by delving into that issue. Secondly, the High Court fell in error by assessing the permanent disability as 40% instead of 100%. It was urged that total disablement, whether temporary or permanent, of a workman is to be adjudged on the basis of his incapacity to perform the work which he was capable of performing at the time of the accident resulting in such disablement. The appellant was a loading and unloading labourer at the time of the accident. For the purposes of loading/unloading, use of both arms/hands are required. The evidence brought on record had clearly indicated that the appellant's left hand was rendered useless therefore she was declared unfit for labour job. In such circumstances, the Commissioner was justified in assessing the permanent disability as 100% (i.e., total disablement) whereas the High Court fell in error by assessing it as 40%. In support of his submissions, the learned counsel for the appellant placed reliance on decisions of this Court in Chanappa Nagappa Muchalagoda v. Divisional Manager, New India Insurance Co. Ltd.3 and Golla Rajanna and Others v. Divisional Manager and Another.4 DISCUSSION AND ANALYSIS

22. We have considered the submissions and have perused the record.

23. There is no dispute between the parties in respect of the following:-

> (a) that the appellant was under employment of R-2 as a loading and unloading labourer for Truck No. MPF 7567, which was insured with R- 1 at the time of the accident;

(b) that the accident occurred during the course of employment;

(c) that at the time of accident, age of the appellant was 30 years and monthly wages were Rs.3000; and

(d) that though the Board declared her permanently disabled to the extent of 50%, but certified that she is 'unfit' for labour.

(2020) 1 SCC 796 (2017) 1 SCC 45

24. Section 4(1)(b) of the Act, at the relevant time, read as under:-

> "4. Amount of compensation.- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-
>
> (a). .....
>
> (b) Where permanent an amount equal to sixty per total disablement results cent of the monthly wages of the from the injury injured employee multiplied by the relevant factor;

Or an amount of one lakh and forty thousand rupees, whichever is more;

Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

Explanation I.-- For the purposes of clause (a) and clause

(b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due."

25. "Total disablement" is defined by section 2(1)(l) as follows:-

> " "total disablement" means 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 the accident resulting in such disablement:

> Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more;"

26. In Pratap Narain Singh Deo v. Srinivas Sabata and Another5, decided by a four-Judge Bench of this Court, the injured workman was a carpenter by profession and by loss of left hand above the elbow, he was evidently rendered unfit for the work of carpentry and, therefore, the Commissioner awarded compensation by considering permanent disability as total i.e., 100%. The employer raised an argument that the injury did not result in permanent total disablement of the workman and therefore, the Commissioner committed a gross error of law in taking a view that there was total disablement. In that context, this Court held: -

> "5. The expression "total disablement" has been defined in section 2(1)(l) of the Act as follows:
>
> " "total disablement" means 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 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 (1976) 1 SCC 289 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. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal."

27. In Chanappa Nagappa Muchalagoda (supra), the issue that came for consideration before this Court was, whether a workman driver who, on account of injury on his leg, could neither stand for a long time nor fold his legs and was required to use a walking stick, and could not lift heavy objects, would be entitled for compensation by taking the disability as 100% or less, as per the medical opinion. Notably, in that case, the doctor had certified that the workman had suffered 37% disability in his whole body, and could not perform the work of a truck driver any longer. In that context, it was held:

> "10. It is the admitted position that the appellant can no longer pursue his vocation as a driver of heavy vehicles. The medical evidence on record has corroborated his

> inability to stand for a long period of time, or even fold his legs. As a consequence, the appellant has got permanently incapacitated to pursue his vocation as a driver.
>
> 14. ..... As a consequence of the accident, the appellant has been incapacitated for life, since he can walk only with the help of a walking stick. He has lost the ability to work as a driver, as he would be disqualified from even getting a driving license.

The prospect of securing any other manual labour job is not possible, since he would require the assistance of a person to ensure his mobility and manage his discomfort. As a consequence, the functional disability suffered by the Appellant must be assessed as 100%."

28. In light of the aforesaid decisions and the definition of the term "total disablement" as provided by clause (l) of sub-section (1) of section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement. Thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement.

29. In Mohd. Nasir (supra), which has been relied by the High Court, the workman was a cleaner. He had suffered fracture in the leg. It was held that such injury would not amount to permanent loss of the use of the entire leg. Hence, the disablement was found partial and not total.

30. In Mubasir Ahmed (supra), another decision relied by the High Court, the matter did not relate to injuries specified in Schedule I and, as such, it was observed that the case was covered by Section 4(1)(c)(ii) of the Act. However, in that case, the Court at no stage examined whether the disablement in question had incapacitated the workman from performing all work which he was capable of performing at the time of the accident resulting in such disablement. In other words, the Court had no occasion to examine the true import of the term "total disablement" as defined by Section 2(1)(l) of the Act. Therefore, in our view, the decision in Mubasir Ahmed (supra) was wrongly applied by the High Court.

31. In the instant case, on the basis of medical certificate provided by the Board, the Commissioner found the appellant unfit for labour inasmuch as there was complete loss of grip in appellant's left hand. Prior to the accident, the appellant worked as a loading/unloading labourer. Even if she could use her right hand, the crux is whether she could be considered suitable for performing her task as a loading/unloading labourer. Such a task is ordinarily performed by using both hands. There is no material on record from which it could be inferred that the appellant was skilled to perform any kind of job by use of one hand. It is also not a case where the appellant had the skill to perform her job by using machines which the appellant could operate by using one hand. In such circumstances, when the Board had certified that the appellant was rendered unfit for labour, there was no perversity in

the decision of the Commissioner in awarding compensation by treating the disability as total on account of her functional disability. Consequently, no question of law, much less a substantial one, arose for consideration by the High Court so as to allow the appeal in exercise of power under Section 30 of the Act. In our considered view, the High Court erred in partly setting aside the order of the Commissioner and assessing the disability as 40% instead of 100%, as assessed by the Commissioner.

32. For the reasons above, the appeal is allowed. The judgment and order of the High Court is set aside. The order of the Commissioner is restored. There is no order as to costs.

.....J. (J.B. PARDIWALA) .....J. (MANOJ MISRA) New Delhi;

July 17, 2023