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Pardeep Nanda Vs State of Punjab and Others

FAO No. 5216 of 2005 (O and M) and Cross Objection No. 26-CII of 2007

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 8, 2012

Citation: (2013) 169 PLR 530

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ashwani Arora, for the Appellant; Amit Singh Sethi, Additional Advocate General, Punjab and Mr. G.S. Gill, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.
The appeal for enhancement of claim for compensation is sought on the ground that the assessment of compensation made

by the Tribunal has not been proper and the Tribunal has merely fixed an arbitrary compensation of Rs. 1,50,000/- for disability without actually

assessing the loss of earning capacity and the serious impairment to the promotion prospects. The issue of negligence is an established fact. The

learned counsel for the respondent would contend that the court below has been reasonably liberal in the compensation assessed. Mr. Sethi would

point out that even when the petitioner was continued in employment in the Court where he was working as Stenotypist and he did not suffer actual

loss of income, he has been provided with Rs. 42,500/- towards loss of income and against medical bills shown to the extent of Rs. 2,000/-, the

Tribunal has provided Rs. 10,000/- as expenses. The evidence of the claimant was that the services of physiotherapist were availed at Rs. 150/-

per visit, but the Tribunal has granted Rs. 15,000/-. The transportation charges for a person, who had undertaken visit to the hospital, had been

provided for Rs. 25,000/- which, according to the learned counsel, was more than adequate. Towards pain and suffering and disability, Rs.

1,50,000/- has been provided which, under the circumstances, where the employee was actually continued in employment with no proof of actual

loss of salary or reduction in his status in employment, there was no case made for enhancing the compensation. In this case, the doctor who had

examined him, had given his report making his clinic observation as follows:-

Case of road traffic accident suffered fracture humerous and both bone forearm right side in February 2003 operated for plating of fracture

humerous and both bones forearm in March 2003. Now, all fractures are united.

On examination, there is marked wasting of forearm and thenar eminence of right upper limb muscles strength of flexors of wrist; hand and thumb is

nil. There is loss of strength in active finger wrist shoulder and wrist and finger flexion right index finger is impaired in it. The loss of power action

and loss of senses at thumb and index finger (neurological loss in the supply of radial nerve/partly of medial and ulnar nerve). Permanent physical

disability is assessed as 48% disability right upper limb.

2. This report clearly suggests that there has been wasting of limb, disfigurement and serious impairment of the range of movements and the

sensation in fingers and the ability to use the same. Against the component of the functionality of arm which is taken normally at 90%, the disability

for the arm was assessed at 48%. The disability was also said to be permanent. The doctor opined that he will not be able to use the right hand for

typing. In this case, there has been a clear evidence that the claimant was stenotypist employed in subordinate judiciary and on account of the

injury and his disability suffered by him, he is not able to use the right hand and fingers and consequently, he has suffered loss of prospect of

promotions in the particular stream of employment that he was occupying. With the original records having been lost, I had directed the counsel to

secure the presence of the party in Court. I had the benefit of the doctor, attached to the High Court, examine the patient in my presence and in the

presence of the counsel and had vouched for myself the continuing disability of the claimant to use his right hand. In this case, I would find that the

functional disability at 48% must be taken as also causing a loss of earning capacity. The mere fact that the person is retained in employment ought

not to be assumed that there is no scope for assessing the loss of earning capacity and this aspect of how a disability can impact the earning

capacity has been considered by this Court in the judgment in Gurmej Singh v. Vijay Kumar and others in FAO No. 1391 of 2007, decided on

17.12.2010. In the said judgment, I have extracted this Court''s earlier judgment in New India Assurance Company Limited v. Santosh and others

in FAO No. 3432 of 2009, decided on 29.09.2010 that has been rendered with reference to the decisions of several courts including the House of

Lords that have spelt out a principle that if continuance of employment is a justification for denial, then the law to Workmen Compensation itself

could be rendered nugatory. The loss of earning capacity must be assessed from the point of view of how an employee could project himself in the

employment market with the existing disability and if such disability would rob him of his skills to rub shoulder with other persons vying for the

same employment, then that shall be taken as a test of the resultant loss of earning capacity. I have noticed that literally the right hand, which is

dominant hand for the petitioner, has been rendered useless for typing consequent to the loss of flexion and insensitivity on the fingers. Apart from

the several wasting, I will take the loss of earning capacity as 25% and apply the same on the salary which he was said to be earning as a typist.

The salary was Rs. 6,172/- per month and taking the same as on the date of filing of the petition, the loss due to earning capacity will be Rs.

3,14,772/- (6172 x 25% x 12 x 17), rounded off to Rs. 3,14,750/-, taking note of the fact that he was aged 25 years, the appropriate multiplier

would be 17. Even apart from the loss of earning capacity, the loss of amenities to life arising due to the disability which was assessed at 48%, I

would provide for an additional amount of Rs. 1 lakh. This shall be in substitution of Rs. 1,50,000/- as assessed by the Tribunal already. The

several heads of compensation would, require to be tabulated and they are reproduced along with the amounts assessed by the Court below:-

3. The amount in excess of what has been assessed by the Tribunal already, shall also attract interest at 7.5% from the date of petition till date of

payment. The liability shall be on the respondents and the claimant is entitled to enforce it against the State which was the employer for the driver

who had caused the accident and who was found to be negligent in the Court below. The award stands modified and the appeal is allowed to the

above extent. The cross objection by the driver for rejection of the amount already assessed is dismissed. I make it clear that joint liability of what

has been cast by the Court below must be understood in the context of the tort law making the master vicariously liable for the act of the

employee.