(1958) 07 GAU CK 0002

Gauhati High Court

Case No: Misc. Appeal (First) No. 25 of 1956

Mohanlal Ajitsaria		APPELLANT
	Vs	
Abdul Rasid		RESPONDENT

Date of Decision: July 1, 1958

Acts Referred:

- Workmens Compensation Act, 1923 - Section 2(1), 4(1)

Citation: AIR 1959 Guw 10

Hon'ble Judges: Sarjoo Prosad, C.J; H. Deka, J

Bench: Division Bench

Advocate: H. Goswami and B.M. Goswami, for the Appellant; R.C. Choudhari, for the Respondent

Final Decision: Dismissed

Judgement

Sarjoo Prosad, C.J.
This is an appeal u/s 30 of the Workmen''s Compensation Act, 1923 (Act VIII of 1923), against an order dated 21-4-1956 passed by Mr. R.H. Shaw, Deputy Commissioner, Sibsagar, acting as Commissioner under the Workmen''s Compensation Act. By the order in question the Commissioner has awarded a sum of Rs. 1,470/- as compensation to the respondent u/s 4(c)(ii) of the Act.

2. The short facts are that on 27-2-1947 the respondent Abdul Rasid sustained an injury while on duty in a mill then belonging to the appellant where he was the head fitter. As a result of this serious injury he fractured his pelvic bone. He was taken to the Mission Hospital on 2-3-1947 for treatment from where he was released on 10-3-1947.

His case is that this was due to the fault of the management which did not care to give him proper medical aid. He then got himself admitted in the Government hospital at Jorhat for treatment on 15-4-1947 and was released from there on 23-4-1947; later, he also proceeded to the Dibrugarh Government hospital on 6-5-1947 where he was duly

examined under X-ray; but, he says that due to lack of prompt and proper medical aid, by the management, he became permanently lame and lost his ordinary earning capacity.

The Union to which he belongs, on those facts, presented a petition on 4-2-1948, claiming compensation from the management of the mill as laid down by the Rules, on account of his permanent partial disablement. On an earlier occasion, his petition was summarily rejected by the then Commissioner Sri B.L. Sen without even giving him a hearing. The order was accordingly set aside by this Court and the case remanded to the Commissioner for disposal according to law.

This was on 21-12-1950. The said Commiser after taking evidence in the case and hearing the parties, again dismissed the claim on 4-6-1951. The petitioner, therefore, moved this Court against that order, which was set aside on 15-12-1953. The Court found that the injury was caused to the workman in the course of his employment; as such, he was entitled to compensation and the Commissioner was in error in assuming that the workman had voluntarily and unnecessarily exposed himself to an added peril for which the management could not be liable.

The Court, therefore, directed that the Commissioner should rehear the case on certain issues which it framed for the purpose and then dispose of the matter. These issues are:

"(1) Whether the injury has been aggravated and the aggravation has occurred in the circumstances which bring the case within the purview of Clause (6) of Section 11;

2. If so, is the workman entitled to any compensation for partial disablement, temporary or permanent, which may be deemed to have occurred if the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed."

By the order now under appeal, the present Commissioner has found these issues in favour of the workman and directed payment of compensation as aforesaid.

3. This appeal has, therefore, been preferred by the proprietor of the mill, Mohanlal Ajitsaraia. It is contended for the appellant that the workman is not entitled to compensation, because the aggravation of the injury was due to his own fault in not attending to the direction of the medical authorities whose services had been offered to him.

It is argued that Clause (6) of Section 11 applies to this case. The said clause provides "inter alia" that where an injured workman, who has been attended regularly by a qualified medical practitioner, has deliberately failed to follow his instructions and

"that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical

practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly."

It is urged that if he had attended to the advice of the doctor, his injury would have been duly cured and he should therefore, have no compensation at all. Reliance has been placed in this connection on the evidence of the doctor of the Mission Hospital, Dr. P. C. Roy. The doctor says that the workman was brought to his hospital with a fracture of the thigh bone, which had broken near the neck of the bone.

According to him, the patient was put in splints but the patient himself removed the splints on the fourth day and left the hospital at his own risk against medical advice. The Doctor says that the fracture might have been otherwise cured. The Commissioner has not found it possible to act on the Doctor''s evidence. He points out that although the incident happened on 27-2-1947, he was not taken to the Mission Hospital until 2-3-1947, which fact alone shows that the owner of the mill was not keen about the treatment of the worker and in giving him prompt medical aid.

The statement of the Doctor that he removed the splints of his own accord on the fourth day and left the hospital is not easy to accept. The subsequent conduct of the patient shows that he was anxious for his recovery from the injury and he would not have willingly left the hospital except for good reasons. The workman deposes that the management did not provide for his medical attendance properly and he was, therefore, taken back from the Mission hospital.

He took the help of another Doctor and subsequently went to the Civil Hospital at Jorhat; since he was not cured even there, he went to the Dibrugarh hospital. He says that in spite of all his attempts, he has become permanently crippled in that leg. Two other witnesses, Hari Ram and Bhaku Ram have also supported him on the point. They both say that it was at the instance of the manager of the mill that Abdul Mistry was removed on the fourth day from the Mission hospital. Bhaku says that he was not cured till then.

Another Doctor, Dr. Mahendra Nath Sarma, an Assistant Surgeon of the Civil Hospital (Jorhat), proves that Abdul Rasid was admitted in the hospital on 15-4-1947, for old fracture of the neck of the femur. He was discharged from the hospital on 23-4-1947. It was a case of both callous formation and deformed fracture. It was a permanent injury and according to this Doctor, a man having such an injury would not be able to walk normally though he could do his work, if he could work sitting.

The Doctor admits that such cases may be cured completely; but the fact remains that in this case it was not cured. Another retired Sub-Assistant Surgeon, Dr. M. H. Hazarika, also proves that he was called one day in the middle of May 1947, for treatment of Abdul Rasid and he directed him to go to Dibrugarh immediately for prompt treatment. It is, therefore, obvious that it was not due to any fault of the workman that there was any aggravation of the injury.

If at all, the fault lay with the management, who did not offer him prompt and qualified medical help and even when he was taken to the Mission hospital a few days after the accident, he was shortly thereafter removed from that hospital without being properly cured. On those materials, the Commissioner was justified in holding that the case was not covered by Clause (6) of Section 11. The cases cited by the appellant in support of his contention depend on their own facts and do not affect the present case.

4. The next question is about the amount of compensation payable to the workman. It has been found that though the workman has not been completely deprived of his leg as a result of the injury, he has at least been permanently crippled in that leg. The Commissioner holds that it was a case of permanent partial disablement as a result of the injury; and inasmuch as the injury in question was not specified in Schedule I of the Act, he fixed the compensation u/s 4(1)(c)(ii) at 30 per cent. of the amount shown in the table laid down in Schedule IV of the Act.

It is contended for the appellant that it had to be strictly proved in this case that the compensation was proportionate to the loss of earning capacity permanently caused by the injury. It is argued that there is no evidence of any such loss of earning capacity in the present case and a number of decisions have been cited to show what this loss of earning capacity means. It has also been argued that it is not a case of permanent partial disablement at all.

Our attention has been drawn to the list of Injuries mentioned in Schedule I of the Act and it is suggested that the injury complained of in the present case does not occur in the table. Schedule I mentions loss of leg at or above the knee, but not any crippling of the leg. But it is obvious that the Act contemplates other instances of per manent partial disablement, resulting from injury than those specified in the Schedule.

This is apparent from Sub-clause (ii) of Section 4(1)(c) and the Commissioner has, therefore, acted under that section in fixing the amount of compensation. The question whether there was adequate material on which the Commissioner could fix the proportionate loss in the earing capacity of the workman has presented some difficulty.

5. Partial disablement has been defined in Section 2(1)(g) of the Act. It says that 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 Schedule I shall be deemed to result in permanent partial disablement.

The learned counsel in his contention lays special emphasis on the words that there should be proof to the effect that as a result of the permanent partial disablement, (i) his earning capacity was reduced in every employment; and (ii) which the workman was capable of undertaking at the time of the accident. It is argued that the burden was entirely upon the workman to prove these facts before he could get any compensation,

but no such evidence has been given.

A strict construction of the rules of course imposes a duty on the Court to find the above factors; but an enquiry of this nature is more or less in the nature of a guess work. It is conceded that the injury in the present case does not fall in the category of one of the scheduled injuries. If it did, then of course there would be no difficulty in working out the rate of compensation; but, as it is not one of the scheduled injuries, the difficulty in computation arises.

In estimating the percentage the question to be answered is what wages the workman could expect to receive? As pointed out by Clow in his Workmen''s Compensation Act, Third Edition, at page 65--

"It should be remembered that partial disablement when permanent must involve a loss of earning capacity, not merely in the occupation the man had at the time of the accident, but in every occupation which he was then capable of carrying on: consequently, in calculating the loss of earning capacity, the possibility of the man obtaining a different type of job must be borne in mind."

The estimate made in such class of cases even with the best of expert assistance must needs involve a large amount of guess work and the probability of a wide divergence of view between tbe employer and the workman. That being so, although the evidence adduced by the workman on the point is not as full as it should have been, I think that it would not be in the interest of justice to send back the case for fresh materials and for reconsideration of the matter by the Commissioner.

There is no doubt that in this case, the workman has become permanently limp and though there is evidence given by the employer to show that even till the closing of the mill on 5-1-1953, he was being paid at the same rate of wage (with some increase in the dearness allowance) by the mill authorities as it was prior to the date of the accident, it cannot be denied that his earning capacity has been impaired on account of the fact that as a result of the injury he definitely walks with a bad limp and his capacity for employment due to that defect will not have the same market value as it had before he received the injury in question.

His evidence shows that after the injury he could not work regularly and he could work with great difficulty. Besides, he says that he has become hard of hearing. The Commissioner does not think that there is sufficient material to prove that he became hard of hearing on account of the injury; but, he accepts the other statements made by the workman on the point. The workman further says that if he had been physically fit, he could have earned Rs. 300/- to Rs. 400/- per month.

The loss of leg at or above the knee, referred to in Schedule I on account of any permanent partial disablement, allows the percentage to be calculated at 60 per cent of the earning capacity. The Commissioner has adopted half of this percentage in the

present instance in assessing the amount of damages on the earning capacity of Rs. 100/-Rs. 200/- a month; and on the whole, it is difficult to say that in the process he did not exercise a proper judicial discretion or that the assessment was without any material.

The learned counsel for the appellant has referred to a number of decisions to show what the loss in earning capacity means : Upper Doab Sugar Mills. Ltd. Vs. Daulat Ram, Governor-General-in-Council v. Dewa Khanno, AIR 1947 Sind 184 (B), and Sukhai Vs. Hukum Chand Jute Mills Ltd., These cases of course insist upon a strict compliance with the letter of the law in regard to the requirements of Section 2(1)(g) of the Act; but in the view, which I have taken of the matter, it is not necessary to discuss these cases in any detail, because I find here that the assessment made by the Commissioner an the circumstances is not altogether unjustified and against the requirements of the law.

In the last case, for instance, Chakravarti, C. J. after having discussed the principles underlying the relevant provisions of the Act, ultimately thought it more just and equitable to decide the case on the footing that the injury in question fell within one of the scheduled injuries and assessed the compensation on that basis. If the contention of the appellant were accepted that there should be fuller evidence on the record on the point of the workman''s loss of earning capacity, it would in a sense lead to an unnecessary roving enquiry in the present case, which we do not think in the circumstances justified.

It is to be remembered that in this instance, it is for the third time that the matter had travelled up to this Court.

6. We accordingly dismiss this appeal with costs and maintain the order of the Commissioner.

H. Deka, J.

7. I agree.