

(1976) 02 CAL CK 0030

Calcutta High Court

Case No: F.M.A. No. 270 of 1973

Katras Jherriah Coal Co.

APPELLANT

Vs

Kamakhya Pal

RESPONDENT

Date of Decision: Feb. 18, 1976

Acts Referred:

- Workmens Compensation Act, 1923 - Section 2(1)(g), 30, 4(1)(c)

Citation: 80 CWN 513

Hon'ble Judges: Mitra, C.J; S.K. Datta, J

Bench: Division Bench

Advocate: Nalini Kanta Mukherjee, for the Appellant; Sasanka Sekhar Ghosh, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.

This is an appeal u/s 30 of the Workmen's Compensation Act, 1923. The respondent was a workman of the appellant's colliery. On 21 February, 1970, he met with an accident arising out of and in course of his employment. An iron particle hit his right eye and he lost the vision of that eye permanently. The Commissioner has held that he has sustained loss of earning capacity to the extent of 40% per cent. According to the appellant his disability should have been assessed to the extent of 30% per cent. Section 2(1) (g) of the Act defines "partial disablement". It 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 premanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement."

Section 4(1) (c) is as follows:

Section (1) -- Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: --....

(c) Where permanent partial disablement results from the injury --

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an 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 permanently caused by the injury.

2. It would be convenient at this stage to look into relevant portions of Schedule I. The Schedule has two parts -- part I and Part II, Part I gives the list of injuries deemed to result in permanent total disablement. Item 4 in part I is as follows:

Serial No.	Description of inj	Percentage of loss of earning capacity.
4.	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential	...100

Part II gives the list of injuries deemed to result in permanent partial disablement. This part has been divided into (a) Amputation case upper limbs (either arm) and (b) Amputation cases -- (i) lower limbs and (ii) other injuries. In other injuries there are two items amongst others which are relevant for our purposes.

These are items 25 and 26 and are as follows:

Item 25

Serial No.	Description of injury.	Percentage of loss of earning capacity.
25	Loss of one eye, without complications, the other being normal	...
 40

Item 26

There is a note below all the items in Schedule I. The note says : --

Complete and permanent loss of the use any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

3. The aforesaid items 25 and 26 came up for consideration before Mr. Justice Satish Chandra in the Allahabad High Court in Rghuraj Singh v. Divisional Superintendent, Northern Railway, New Delhi., 1968 Lab I.C. 48 Mr. Justice Satish Chandra has observed:

The question, therefore, is whether the word "loss" in Entry No. 26 means a complete or total loss of vision or it refers to a case of vision decreasing in degree. The note appended to the 1st Schedule is material for the resolution of this controversy. The note says, "complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member". This note indicates that if the use of any limb or member is completely and permanently lost, it will, for the purposes of the Schedule, be a "loss" of that limb or member. Even if the limb or member itself is not physically lost, but if it becomes totally unusable, there is its "loss" under the Schedule. An eye is a limb or member of human body. The explanatory note will apply to it. An eye is used for sight or vision. So if the vision of an eye is completely and permanently lost, it will amount to the "loss of an eye". Such a case will fall under entry 25 because it provides for loss of an eye. Total loss of vision of an eye cannot as well be "loss" of vision of an eye under entry 26 because then entry 26 will become a surplusage, a mere duplication of entry 25. Such a situation is clearly ruled out by the provisions of a different percentage of "loss" of vision of an eye under encases. Entry 25 provides for a loss of 40%. Entry 26 prescribes a loss of only 30%. Obviously, entry 26 is intended to deal with a less serious injury than is covered by entry 25. Total loss of vision being covered by entry 25, "loss of vision" in entry 26 will refer to a partial loss of vision. A lessening of the vision will, hence, fall under entry No. 26. Such an injury being mentioned in the 1st Schedule, the case will be covered by the 1st sub-Clause of S. 4(1) (c)...

4. The Allahabad High Court, it appears, proceeds on the basis of the note appended to the 1st Schedule which speaks of permanent loss of any limb or member. The point for investigation is whether an eye is a limb or member of a human body. We have looked into Stedman's Medical Dictionary (Third Unabridged lawyers' Edition). The word "limb" appears at page 711. It means (1) An extremity; a member; an arm or leg; (2) A segment of any jointed structure. The word "member" appears at page 757. Member means a limb or extremity. The word "extremity" has not been dealt

with in this Dictionary. But we find its meaning in Blakiston's illustrated Pocket Medical Dictionary (1st Edition) at page 260. "Extremity means the distal or terminal end of any part. Lower extremity is the hip, thigh, leg, ankle or foot. Upper extremity is the shoulder, girdle, arm, forearm, wrist and hand.

5. From the above meanings of the three words, limb, member and extremity appearing in two Medical Dictionaries it does not seems to us that an eye is either a limb or a member.

6. We may, however, refer to the meanings of limb and member in the second dictionary referred to above. At page 403 limb means (1) one of the extremities attached to the sides of the trunk and used for apprehension of locomotion; (2) Elongated limb like structures. "Member" at page 425 means a part of the body especially a projecting part as the leg or the arm.

7. From these two meanings of limb and member appearing in Blakiston's Dictionary an eye is not a limb but may be said to be a part of the body and as such a member. But in the instant case in view of the three entries in the Schedule we have referred to it is difficult to treat the eye as a member of the body. In item 4 of Part I total loss of sight obviously of both the eyes has been dealt with. The loss of earning capacity in such a case would be 100% per cent. But items nos. 25 and 26 make a distinction between loss of one eye and loss of vision of one eye. If the eye-ball of one eye itself is lost it would be loss of that eye. But if the eye-ball of one eye remains but there is loss of vision of that eye, which obviously imply total loss of vision of the said eye, then it would be loss of vision of one eye. A partial loss of vision in the context of the three items taken one after another does not appear, to have been included in item No. 26. We are unable accordingly to subscribe to the view taken by the Allahabad High Court in the case cited above. The note appended to Schedule I does not apply to item No. 26 as it itself mentions loss or vision of one eye. The Note has relevance to amputation of lower or upper limb. Where there is-no amputation of any limb but there is complete and permanent loss of use of any such limb or member such loss of use of limb or member would be equated to loss of the limb or member itself. If the interpretation of the Allahabad High Court be accepted then item No. 26 is a surplusage and there will be no difference between a partial loss of vision and a total loss of vision. A partial loss of vision will have to be assessed in accordance with the provision of clause (ii) of section 4(1) (c) of the Act. In our case the respondent has totally lost the vision of one eye and his compensation has to be assessed in accordance with item No. 26 of Part II of Schedule I, that is, at 30% per cent loss of earning capacity. The order passed by the Commissioner has to be amended accordingly. The commissioner has assessed the compensation at Rs. 4480 k On the basis of 30% per cent loss of earning capacity the total compensation payable to the respondent would have been Rs. 3360/-. By an order passed by this Court on 7 August, 1973 the respondent was allowed to withdraw Rs. 1250/- from the amount deposited with the Commissioner. The

respondent may now withdraw the balance of Rs. 2110/- and costs assessed at Rs. 27/-. The remaining amount after the three withdrawals of Rs. 1250/-. Rs. 2110/- and Rs. 27/- may be withdrawn by the appellant.

The appeal is disposed of as above.

There will be no order for costs in this appeal.

Salil Kumar Datta, J.

I agree.