(1981) 05 CAL CK 0012

Calcutta High Court

Case No: None

Lipton (India) Ltd.		APPELLANT
	Vs	
Gokul Chandra Mondal		RESPONDENT

Date of Decision: May 19, 1981

Acts Referred:

- Employees Compensation Act, 1923 - Section 2, 4

Citation: (1981) ACJ 453 : 85 CWN 904 : (1982) 1 LLJ 255

Hon'ble Judges: P.K. Banerjee, J; M.M. Dutt, J; A.K. Sarkar, J

Bench: Full Bench

Judgement

P.K. Banerjee, J.
This appeal has been referred to the full Bench by a Division Bench consisting of A N. Sen, C. J. (as his Lordship then was) and R.M. Dutta, J., as the Bench could not agree with the decision of another Division Bench reported in Kairas Jherriah Coal Co, Ltd. v. Kamakhya Paul 80 C. W. N. 53). We may state the facts leading to the present reference.

2. The respondent Gokul Chandra Mandah a workman in the wage group of Rs. 300-400 per month under the appellant, Lipton (India) Ltd., filed an application before the Commissioner for Workmen''s Compensation claiming from the appellant a sum of Rs. 3,780 as compensation at the rate of 30% loss of his earning capacity alleging that on March 28, 1972 he had sustained an injury to his left eye by the fall of iron particles with the consequent loss of vision in an accident arising out of and in the course of his employment under the appellant The appellant admitted the employment of the respondent under it, his rate of wages and the injury suffered by him in course of his employment, but denied that he had lost the vision of his left eye, as alleged. It was alleged that the respondent was disabled for 14 days and thereafter he resumed his duty on April 12, 1972, without any permanent partial disability or loss of earning capacity. The appellant paid a sum of Rs. 55/ to the respondent as compensation.

3. The Commissioner, after considering the evidence adduced by both the parties including the medical evidence, came to the finding that the vision of the left eye of the respondent workman had been affected due to the injury he had sustained, and that he had sustained permanent partial disability in the left eye in the accident arising out of and in the course of his employment under the appellant. As to the amount of compensation, the Commissioner relied on a decision of a learned single Judge of the Allahabad High Court in Raghuraj Singh v-Eastern Railway 1967 I L L J. 68 and took the view that the respondent was entitled to compensation at the rate of 30% of the loss of his earning capacity as fixed by Item 26 of Part II of the first Schedule to (he Workmen''s Compensation Act overruling the contention of the appellant that Item 26 was not applicable, and that compensation was to be determined u/s 4(1)(c)(ii) of the Act. In that view of the matter, the Commissioner held that the respondent had sustained loss of earning capacity to the extent of 304, as fixed under Item 26. He allowed the application of the respondent and directed payment to him by the appellant of the sum of Rs. 3.780 less the sum of Rs. 55 already paid by the appellant.

4. Being aggrieved by the said order of the Commissioner for Workmen''s Compensation, the appellant preferred an appeal to this Court which was heard by the Bench that referred the appeal to the Full Bench. At the hearing of the appeal, the appellant challenged the propriety of the finding of the Commissioner that the respondent workman had sustained a permanent partial disability of his left eye. It was contended on behalf of the appellant that even assuming that the respondent workman had suffered partial loss of vision of the left eye, Item 26 of Part II of Schedule I of the Act was inapplicable, and that compensation should be determined in accordance with the provision of Section 4(1)(c)(ii) of the Act for such partial loss of vision. In support of the contention, reliance was placed on behalf of the appellant on a Bench decision of this Court in the case of Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul 80 C.W.N. 53. which took a view contrary to the decision in Raghuraj Singh''s case 1967-I L.L.J. 68 of the Allahabad High Court.

5. The Court affirmed the finding of the Commissioner that the respondent had sustained a partial permanent disability of his left eye. The Court, however, agreed with the decision of the Allahabad High Court in Rashuraj Singh''s case (supra) and took the view that Item 26 of Part-II of Schedule-I of the Act applied to the case of the respondent sustaining partial loss of vision of the left eye. It was observed that the view was clearly supported by the note appended to the Schedule "complete and permanent loss of the use of any limb or member referred to in the Schedule shall be deemed to be the equivalent of the loss of that limb or member". The Court expressly differed with the earlier Bench decision of this Court in Katras Jherriah Coal Co."s (supra) that the words "limb or member" in the said note would not include the "eye", As the appeal Court differed with the said earlier Bench decision it referred the appeal to the Full Bench, interfering the appeal to the Full Bench the Court formulated the following two points for the consideration of the Full Bench:

(1) An eye, according to us, should be held to be a limb or a member within the meaning of the note in the Schedule and we differ from the view expressed by the Division Bench that the "eye" cannot be said to be a limb or member within the meaning of the said note:

(2) Partial loss of vision of one eye, without complications or disfigurement of eye ball, the other being normal, will be covered by Item 26 in Part II of Schedule I and it cannot be considered to be a non-scheduled item.

6. The question with which we are concerned relates to the computation of the amount compensation. Section 4 of the Act deals with the amount of compensation. Section 4(1)(c) of the Act provides as follows:

(c) Where permanent partial disablement results from the injury-(i) in the case of an injury specified in 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 Part II of Schedule I such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury

[The Explanation to Section 4(1)(c) is not relevant for our purpose and as such, it is omitted].

Items 25 and 26 of Part II of Schedule 1 are set out below:

Serial No.	Description of injury	Percentage of loss of earning capacity
25.	Loss of one eye, without complications, the other being normal	40
26.	Loss of vision of one eye without complication or disfigurement of eye ball, the other being normal	30

The note appended to Schedule I is as follows:

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

7. In the instant case, the respondent has sustained permanent partial loss of the left eye. Item 26 refers to the loss of vision of one eye. The question is whether partial loss of vision of one eye will come within the purview of Item 26. It is contended by Mr. Chunilal Ganguly, learned advocate, appearing on behalf of the appellant that unless there is complete loss of vision of one eye, item 26 is not attracted, and the compensation is to be fixed in accordance with Clause (ii) of Section 4(1)(c) of the Act. We are unable to accept the contention-Item 26 only refers to loss of vision of one eye. Loss of vision may be either total or partial. There is nothing in Item 26 which excludes partial loss of vision. If it was intended that Item 26 would apply only to complete or total loss of vision, it would have made an express provision in that regard. In a welfare legislation like the one with which we are concerned, if any particular provision is capable of two interpretations, the one that is more favourable to the persons for whose benefit the legislation has been made should be adopted. In the instant case, the interpretation that we have made of Item 26 is more beneficial to the workmen. The Allahabad High Court in Raghuraj Singh''s case (supra) has taken the view that Item 25 also includes complete loss of vision, and Item 26 only provides for partial loss of vision. In view of the facts of the present case, we need not consider whether Item 26 contemplates only partial loss of vision but, in our opinion, there can be no doubt that partial loss of vision of one eye comes within the purview of Item 26.

8. The above interpretation of item 26 by us leaves no scope for the consideration whether the words ""limb or member'' in the note to the schedule includes the eye, and also whether the earlier Bench decision in Katras Jherriah Coal Co''s (supra) is correct or not. The Division Bench, however, in referring the appeal to the Full Bench has formulated two points, which have been already set out above, for the consideration of the Full Bench. The point No. 1 relates to the interpretation of the note to the Schedule I. The Commissioner also has considered the note, and before us much argument has been made on behalf of either party relating to the proper construction of the note, Accordingly, we may consider the note and put our interpretation thereon.

9. It is convenient for us to note at this stage the judgment of the Allahabad High Court reported in Raghuraj Singh''s case 1967 I L.L.J. 68. In the said case to learned single Judge of the Allahabad High Court held at page 70 of the report as follows:

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 provision of a different percentage of loss of earning capacity in the two cases. Entry 25 provides for a loss of 40 per cent. Entry 26 prescribes a loss of only 30 per cent. 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.

10. The Division Bench in Katras Jherriah Coal Co.''s case could not agree to the above view of the Allahabad High Court. In that case, Sankar Prasad Mitra, C.J., who delivered the Judgment observed as follows:

5. The Allahabad High Court, it appears proceeds on the basis of the note appended to the Ist 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 Blakistons Illustrated Pocket Medical Dictionary (1st Edition) at page 260. ''Extremity'' means the distal of terminal end of any part. Lower extremity is the hip, thigh, leg. ankle or foot. Upper extremity is the shoulder, girdle, arms, forearm, wrist and hand.

6. Form the above meanings of three words, limb member and extremity appearing in two medical dictionaries it does not seem to us that an eye is either a limb or a member.

11. The Division Bench in Katras Jherriah Coal Co''s case (supra) considered the medical dictionary for the purpose of construing the words "limb or member" as contained in the note to the Schedule I of the Act. Their Lordships seem to have taken the view that the words "limb or member" referred to in the Schedule should be considered in their technical meaning as given in the medical dictionaries. In our opinion, the words "limb or member" should be considered in their ordinary English meaning. The meaning of the word "member" as contained in the Webster Dictionary includes an organ. According to the Oxford Dictionary, the word "member" includes a part of an organ. In the Concise Oxford Dictionary the word "eye" means an organ of vision. On a consideration of the meaning of the word as found in the dictionaries we are of the opinion that the words "limb or member" includes an eye also. In a Division Bench judgment reported in Sukhai Vs. Hukum Chand Jute Mills Ltd., , P.B. Chakravarti, C. J. and Mallick, J., considered whether the word ""eye" was an organ or not. In the said judgment it has been specifically stated that eye is an organ of a human body. It was found in that case that the left eye of the appellant was injured be Chinese clay balls. Their Lordships of the Division Bench speaking through Chakravarti, C. J., held, inter alia, that "if the words of the proviso to section 2(1)(g) read with Schedule I are to be taken in a literal sense, the conclusion seems to be inescapable that whenever an injury of the kind specifically mentioned in the Schedule has been suffered by a workman as a result of an accident, he becomes instantly entitled to compensation and compensation of the amount prescribed by the Schedule without any necessity for any investigation into further facts." It has been already held that partial loss of vision of one eye attracts item 26 of Part II of Schedule A of the Workmen''s Compensation Act. In Katras Jherriah Coal Co.''s their Lordships, however, held confirming the finding of facts of the Commissioner that the workman had sustained 40% loss of earning capacity as he had lost the vision of that eye permanently. In that view of the matter in our opinion, in that case it was not necessary to go into the

other question raised.

12. We have already said that their Lordships while interpreting the words "limb or member" appearing in the note to the Schedule considered the technical meaning of the said words. The Workman"s Compensation Act is a beneficial legislation for granting relief to the workman who may be injured in an accident taking place in course of employment and, accordingly, the construction of any provision of the Act which is more favourable to the workmen should be adopted. We are, therefore, of the opinion that the words limb or member as contained in the note appended to the Schedule should be understood in their ordinary meaning. In the Oxford Illustrated Dictionary, the word "member" means a part of the body or organ. In the Chambers Dictionary also the word "member" means organ of a person.

13. In that view of the matter, in our opinion, the narrow view taken in Katras Jherriah Coal Co."s case (supra) cannot be accepted. An eye is certainly an organ of a human body and, as such, it comes within the meaning of the word "member" as contained in the note to the Schedule of the Act. Considering the meaning as hereinbefore stated in the Oxford Dictionary as also in the medical dictionary, it cannot but be said that the words "limb or member" include any organ of a person and, in any case it does include the eye. In our opinion the learned Judges in Katras Jherriah Coal Co"s case (supra) took a very narrow view of the words "limb or member" and were not right in holding that "eye" is not a member or that ""eye" cannot be treated as an organ.

14. Item 25 says about the total loss of vision of the eye without complication to the other eye. Item 26 speaks of loss of vision of one eye without complication or disfigurement of eye ball, the other being normal. Part II gives the list of injuries deemed to result in permanent partial disablement. The finding of the Commissioner is that the loss of vision of one eye has resulted in a permanent partial disability. In that view of the matter, incur opinion, partial loss of vision of one eye comes within the purview of Item 27 of Part-II of Schedule I and therefore, the Commissioner is right in allowing compensation at the rate of 30 of the loss of earning capacity of the workmen. We, therefore, hold that eye comes within the expression "limb or member". It is an organ of human body and it comes within the meaning of the word "member" as contained in the note to the Schedule. In so far as item 26 is concerned we are of the opinion that partial loss of vision of one eye without complication or disfigurement of eye ball, the other being normal, come within the purview of Item 26 of Part II of Schedule I.

15. In the result, the order of the Commissioner for Workmen"s Compensation is affirmed and the appeal is dismissed. In view, however, of the facts and circumstances of the case, there will be no order as to costs.