

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5831 OF 2002

K. Janardhan

.....Appellant

Versus

United India Insurance Co. Ltd. & Anr.

...Respondents

JUDGMENT

HARJIT SINGH BEDI, J.

1. This appeal is directed against the judgment and order dated 6th October, 2001 of the learned Single Judge of the Karnataka High Court whereby compensation of Rs.2,49,576/- awarded by the Commissioner for Workmen's Compensation has been reduced to Rs.1,62,224.40/-. It arises from the following facts.

2. The claimant- appellant a tanker driver, while driving his vehicle from Ayanoor towards Shimoga met with an accident

with a tractor coming from the opposite side. As a result of the accident, the appellant suffered serious injuries and also an amputation of the right leg up to the knee joint. He thereupon moved an application before the Commissioner for Workmen's Compensation praying that as he was 25 years of age and earning Rs. 3,000/- per month and had suffered 100% disability, he was entitled to a sum of Rs. 5 lac by way of compensation. The Commissioner in his order dated 18th November, 1999 observed that the claimant was 30 years of age and the salary as claimed by him was on the higher side and accordingly determined the same at Rs. 2000/- per month. The Commissioner also found that as the claimant had suffered an amputation of his right leg up to the knee, he was said to have suffered a loss of 100% of his earning capacity as a driver and accordingly determined the compensation payable to him at Rs. 2,49,576/- and interest @ 12% p.a. thereon from the date of the accident. An appeal was thereafter taken to the High Court by the Insurance Company - respondent. The High Court accepted the plea raised in appeal that as per the Schedule to the Workmen's

Compensation Act, the loss of a leg on amputation amounted to a 60% reduction in the earning capacity and as the doctor had opined to a 65% disability, this figure was to be accepted and accordingly reduced the compensation as already mentioned above. It is in this circumstance, that the aggrieved claimant has come up to this court.

3. The learned counsel for the appellant has raised only one argument during the course of the hearing . He has submitted that the claimant - appellant being a tanker driver, the loss of his right leg ipso facto meant a total disablement as understood in terms of Section 2(1)(e) of the Workmen's Compensation Act and as such the appellant was entitled to have his compensation computed on that basis. In support of this plea, the learned counsel has placed reliance on Pratap Narain Singh Deo vs. Srinivas Sabata & Anr. (1976) 1 SCC 289. The cited case pertained to a carpenter who had suffered an amputation of his left arm from the elbow and this court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled

from all work which he was capable of performing at the time of the accident. It was observed as under:

5. The expression "total disablement" has been defined in Section 2(1)(e) of the Act as follows:

"(1) 'total disablement' means such disablement whether of a temporary or permanent nature, as incapacitates 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 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. There is also no justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule 1, because it was not the appellant's case before the Commissioner that amputation of the arm

was from 8" from tip of acromion to less than 4 below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.

4. Applying the ratio of the cited judgment to the facts of the present case we are of the opinion that the appellant herein has also suffered a 100% disability and incapacity in earning his keep as a tanker driver as his right leg had been amputated from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act 1988 would show that the appellant would now be disqualified from even getting a driving licence.

5. We therefore allow this appeal, set aside the judgment of the High Court and restore that of the Commissioner but with no order as to costs.

..... J.
(TARUN CHATTERJEE)

.....J.
(HARJIT SINGH BEDI)

New Delhi
Dated: May 9, 2008