

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1555 OF 2022
[@ SLP(C) No.26384 of 2019]****ARJUN S/O. RAMANNA @ RAMU APPELLANT****v.****IFFCO TOKIO GENERAL INSURANCE
CO. LTD. & ANR. RESPONDENT****O R D E R**

Leave granted.

1. The appellant was an employee of the second respondent. He was doing the job of driving an auto-rickshaw used as a goods carrier. On 18th February 2009, while the appellant was driving the vehicle, he suddenly noticed a pothole on the road. Therefore, he applied brakes. As a result, the vehicle went out of control, and it overturned. The appellant sustained severe injuries. The vehicle was insured with the first respondent company.

2. The appellant filed a claim under the Workmen's Compensation Act 1983, now titled as the Employees

Compensation Act 1923 (for short, “the said Act”). The claim was filed on the footing that due to amputation of his right upper limb above the wrist joint, he has completely lost the capacity to drive a vehicle. He contended that he had suffered total disablement due to the said injury. The learned Commissioner for Workmen’s Compensation allowed the petition by upholding the said contention. The learned Commissioner held that due to amputation of the right upper limb, he has rendered himself unfit for driving a vehicle and, therefore, the appellant has suffered total disablement.

3. The first respondent preferred an appeal before the High Court. The appeal was partly allowed by holding that the disability ought to have been assessed as 70% partial permanent disability instead of 100%. To that extent, the compensation was reduced.

4. Shri C.B. Gururaj, the learned counsel appearing for the appellant submitted that as a result of amputation of the right upper limb above wrist joint, the appellant will not be in a position to discharge his duty as a driver. Therefore, it is a case of total disablement. He relied upon decisions of this Court in the cases of **Pratap Narain Singh Deo v. Srinivas Sabata & Anr**¹. and **K. Janardhan v. United India Insurance Co. Ltd**².

1 (1976) 1 SCC 289

2 (2008) 8 SCC 518

5. The learned counsel appearing for the first respondent invited our attention to the deposition of Dr. Laxmi Narayanana, who opined that the appellant suffered from permanent partial disability to the extent of 40%. He submitted that the Commissioner committed an error by proceeding on the footing that the appellant suffered from total disablement. He submitted that Section 4 of the said Act is mandatory. Therefore, the case of the appellant was of partial permanent disability. He urged that the first respondent will not be liable to pay compensation as the appellant did not possess a driving licence to drive a commercial goods carrier. He would, therefore, submit that no interference is called for with the judgment of the High Court.

6. The impugned judgment of the High Court proceeds on the accepted position that the appellant was employed as a driver to drive an auto-rickshaw used for carrying goods. The only ground on which the High Court reduced the compensation was that the appellant did not suffer from total disablement. Therefore, the Commissioner for workmen's compensation committed an error by taking the disability at 100%. The first respondent cannot dispute its liability to pay compensation as the High Court has held the said respondent liable. The first respondent has not challenged the impugned Judgment. Therefore, the argument that the appellant did

not possess a driving licence to drive a commercial goods vehicle is not open to the first respondent.

7. The only question which is required to be decided is whether the appellant suffered from total disablement, which is defined in clause (l) of sub-section (1) of section (2) of the said Act. On the issue of disability, what is relevant is the statement of Dr. Laxmi Narayanana, who examined the appellant for making an assessment of disability.

“3) When presented he had a crush injury of right forearm with fractured ends of radius and ulna and triple nerve injury of the right forearm and Guillotine Amputation with stump reconstruction was done on 19-02-2009 and was further managed by me since then with follow up treatment over a period of time.

4) On examination today all the external injuries were found healed up and the amputated stump is also healed up with blunting of the stump due to which there is functional loss of 100% of right upper limb wherein he cannot perform any of the activities with the upper limb on right side. Further I state that he cannot perform the job of driver for ever due to amputation of his right upper limb.

5) In view of this on verifying the records and on examination I am of the opinion that P.P.D. is of 40% with subsequent loss in earnings”.

(Underline supplied)

8. What the doctor has stated in paragraph 5 is his opinion as regards the percentage of disability. But in paragraph 4, the doctor has clearly stated that the appellant has suffered from functional loss of 100% of the right upper limb and cannot perform the job of a driver forever due to amputation of his right upper limb.

9. In the case of **Pratap Narain Singh Deo** (supra) in para 5, this Court held 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”.

10. There is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated him from doing the work which he was capable of doing. The said work was of driving a vehicle. Therefore, the learned Commissioner for Workmen's Compensation was right in holding that the disability of the appellant will have to be treated as 100% disability. Hence, the case of the appellant will be covered by the definition of 'total disablement'.

11. Therefore, the impugned judgment cannot be sustained and will have to be set aside. We are informed that the entire compensation amount as directed by the Commissioner was deposited by the first respondent in the High Court and the appellant has withdrawn the amount payable as per the impugned Judgment of the High Court. Therefore, the appellant will be entitled to withdraw the balance amount lying deposited in the High Court with interest, if any, accrued thereon.

12. Accordingly, the appeal stands allowed. The order of the High Court is set aside. The order passed by the Labour officer-cum-Commissioner for Workmen's compensation is restored.

13. All the pending applications, if any, also stand disposed of.
There shall be no orders as to costs.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

New Delhi;
February 16, 2022.