

PALRAJ

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v.

THE DIVISIONAL CONTROLLER, NEKRTC
(Civil Appeal No. 7430 of 2010)

SEPTEMBER 07, 2010

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[ALTAMAS KABIR AND A.K. PATNAIK, JJ.]

Workmen's Compensation Act, 1923:

s.4 and Schedule I, Part II – Compensation due to disability during employment – State Road Transport Corporation bus met with accident – Appellant, the bus driver, lost use of his legs and became disabled from driving any bus – He claimed compensation – Held: For determining compensation, functional disability resulting in loss of earning capacity is the criteria – Although the driver became totally disabled from driving any vehicle, he remained in a position to earn a living other than by functioning as a driver – The loss of earning capacity has to be computed keeping in mind the alternate employment given to the appellant as a Peon on the same salary as he was enjoying while performing the duty of a bus driver – On facts, the percentage of functional disablement in respect of the appellant fixed at 35%, having regard to his restricted mobility after the accident and also because of his loss of future earnings and promotion – Appellant directed to be provided with compensation on the basis of 35% functional disability.

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s.4A(3) – Interest under the Act – Payment of – Held: Such interest cannot be claimed from the date of the filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due.

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A State Road Transport Corporation bus met with an

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A accident, due to which the driver of the bus, i.e. the appellant, lost the use of his legs and consequently became disabled from driving any bus. Subsequently, the respondent-Corporation provided alternative employment to the appellant as a Peon, on the same salary as he was
B drawing while performing the duty of a bus driver.

The Commissioner, Workmen's Compensation quantified the functional disability of the appellant at 85% and on that basis awarded compensation alongwith interest @ 12% p.a..
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Aggrieved, the respondent-Corporation filed an appeal whereupon the High Court held that the percentage of disability taken by the Commissioner was against the weight of the medical evidence adduced in the
D case, and ought to have been taken at 20% instead of 85%, and, accordingly, reduced the compensation amount with interest @ 12% p.a. from 30 days after the date of the passing of the award.

E Disposing of the appeal, the Court

HELD:1.1. While computing compensation for disabilities being suffered by a workman in the case of his employment, it is the functional disability resulting in loss of earning capacity which is the criteria which is
F followed in assessing compensation. The Workmen's Compensation Act, 1923 has its own formula in computing compensation on account of injuries suffered during employment which is reproduced in Schedule I to the said Act. In Part II of the said Schedule, the loss of
G earning capacity in terms of percentage has been directly related to the loss of any of the limbs and parts thereof, both of the upper limbs as also the lower limbs. [Para 9] [96-G-H; 97-A-B]

H 1.2. In the instant case, though the appellant has lost

his capacity to function as a driver, but with the help of external aids, his mobility has, to some extent, been restored and he is able to perform work which is suitable to his physical condition after the accident. In the appellant's case, by virtue of the injuries suffered by him, his disablement as far as driving a vehicle is concerned is 100%, but that is not the measure of loss of his earning capacity. The Commissioner, Workmen's Compensation, seems to have confused the issue by combining both functional disability and permanent disability in arriving at the figure of 85% by way of loss of earning capacity and has, therefore, arrived at a sum of Rs.1,75,970/- towards compensation. The High Court, on the other hand, realizing the mistake committed by the Commissioner, assessed the loss of earning capacity as 20% instead of 85% and reduced the compensation payable from Rs.1,75,970/- to Rs.41,404.80p.. [Para 11] [97-D-F]

2.1. Section 4(1)(c) of the Workmen's Compensation Act, 1923 indicates that where a workman suffers injury which is not specified in Schedule I to the Act, compensation is to be assessed on 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 as assessed by a qualified medical practitioner. Since, in the instant case, the nature of injury suffered by the appellant is not specified in Schedule I to the Act, the compensation has necessarily to be assessed on the basis of the loss of earning capacity caused by the injury which could amount to 100% disablement in a given case. However, although the appellant has lost the use of his legs for the purpose of driving a vehicle, which could be said to be total disablement so far as driving of a vehicle is concerned, he is in a position to earn a living other than by functioning as a driver, which, in fact, he is currently

A doing, having been posted as a Peon by the respondent-
corporation. [Para 13] [98-G-H; 99-A-C]

2.2. Apart from the fact that the Commissioner,
B Workmen's Compensation, had confused the concept of
functional disablement with permanent disablement in
arriving at the figure of 85% loss of earning capacity, one
also has to take into consideration the fact that the injury
suffered by the appellant did not disable him permanently
C from earning his living other than as a driver. Therefore,
the percentage of functional disablement has to be
modified, since the appellant is permanently disabled as
far as earning a livelihood as a driver is concerned. [Para
14] [99-D-E]

3. The impugned order of the High Court was only
D an attempt to correct the erroneous interpretation of Part
II of Schedule I of the Workmen's Compensation Act,
1923, by the Commissioner, Workmen's Compensation.
The loss of earning capacity has to be computed keeping
in mind the alternate employment given to the appellant
E on the same salary as he was enjoying while performing
the duty of a bus driver. The same cannot be ignored in
computing the amount of compensation which the
appellant was entitled to. In that view of the matter, the
order passed by the High Court is acceptable, but the
F percentage of functional disablement has to be modified
from 20% to at least 35%, having regard to the appellant's
mobility on account of the medical treatment received
after the accident and also because of the appellant's
loss of future earnings and also promotion. The order of
G the High Court is maintained and the appellant is directed
to be provided with compensation on the basis of
functional disability to the extent of 35% and not 20% as
indicated by the High Court. [Paras 17, 18, 19] [101-C-G]

4. On the question of payment of interest, it is evident
H that compensation assessed under Section 4 of the 1923

Act is to be paid as soon as it falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the Commissioner would be entitled to direct payment of simple interest on the amount of the arrears @12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled Bank as may be specified by the Central Government. Both the Commissioner, Workmen's Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of the filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due. [Para 16] [100-G-H; 101-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7430 of 2010.

From the Judgment & Order dated 14.01.2008 of the High Court of Karnataka at Bangalore in M.F.A. No. 3771 of 2003 (WC).

Basava Prabhu S. Patil, Ajay Kumar M., B. Subrahmanya, V.N. Raghupathy for the Appellant.

Hetu Arora for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. The sole respondent who is the Divisional Controller, North East Karnataka Road Transport Corporation, being duly represented and having regard to the facts involved in the appeal, the same was taken up for final disposal at the stage of admission itself.

3. The Appellant was employed as a Bus Driver in the

A Karnataka State Road Transport Corporation. On 10th October, 1998, the vehicle being driven by the Appellant, met with an accident in which he sustained grievous injuries. The Medical Officer who examined the Appellant came to the conclusion that the Appellant had suffered 65% of total body disability and 20%
B of functional disability. The Commissioner, Workmen's Compensation, however, took 85% as functional disability for quantifying the compensation payable to the Appellant, who was admittedly drawing a salary of Rs.15,000/- per month on the date of the accident.

C 4. It was also admitted that on account of the injuries suffered by him, the Appellant was no longer able to drive a vehicle and the Corporation accordingly appointed him as a Peon in the Corporation where he is drawing the same salary. Taking the above percentage of disability, both permanent and
D functional, the Commissioner made an Award granting compensation amounting to Rs.1,75,970/-, together with interest @12% per annum from 10.11.1998 till the date of deposit, to the Appellant.

E 5. Aggrieved by the compensation awarded by the Commissioner to the Appellant herein, the Corporation through its Divisional Controller filed Misc. First Appeal No.3771 of 2003 in the Karnataka High Court. The only question which was raised in the appeal was whether the percentage of disability
F taken by the Commissioner, Workmen's Compensation, Gulbarga, at 85% was against the weight of medical evidence adduced in the case. The appeal was heard by the learned Single Judge of the Karnataka High Court who agreed with the case of the Respondent herein that the Commissioner, Workmen's Compensation, had erroneously taken 85% to be
G the extent of disability suffered by the Appellant and that the same ought to have been 20% instead. On such basis, the learned Single Judge modified the Award passed by the Commissioner, Workmen's Compensation, and reduced the amount of compensation from Rs.1,75,970/- together with
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interest at the @12% per annum, to Rs.41,404.80p. It was also held that the Commissioner had committed an error in awarding interest from the date of filing of the claim petition and the Appellant was entitled to interest on the compensation amount only after 30 days from the date of passing of the Award. The appeal was, accordingly, allowed in part, and the Award passed by the Commissioner, Workmen's Compensation, was modified and reduced from Rs.1,75,970/- to Rs.41,405/- together with interest @12% per annum on the said amount from 30 days after the date of the passing of the Award. The amount which was in deposit before the Court was directed to be transferred to the Commissioner, Workmen's Compensation, Gulbarga, for disbursement. It is the said order of the learned Single Judge, which has been challenged in this appeal.

6. On behalf of the Appellant it was contended that the doctors had certified that the Appellant was 100% disabled as far as his functioning as a Driver was concerned and that his total disability had been found to be 65% while his functional disability was assessed at 20%. Taking the two together the Commissioner, Workmen's Compensation had found the Appellant to have acquired 85% disability that entitled him to a sum of Rs.1,75,970/- in accordance with Schedule IV of the Workmen's Compensation Act, 1923, by taking his monthly income as Rs.2,000/- in view of Explanation 2 to Section 4 of the above Act and multiplying it with the multiplier of 172.52.

7. Mr. Basava Prabhu S. Patil, learned Senior counsel for the Appellant, also submitted that, in fact, the limit imposed by way of Explanation 2 to Section 4 had been increased from Rs.2,000/- to Rs.4,000/- with effect from 8th December, 2000, and the amount of compensation awarded to the Appellant should have been computed on the basis of his monthly wages being Rs.4,000/-. It was contended that the High Court had wrongly interfered with the compensation of the Commissioner, Workmen's Compensation, Gulbarga, and the compensation

A assessed by him. It was submitted that the High Court had erred
in granting compensation on the basis of 20% functional
disability thereby reducing the figure from Rs.1,75,970/- to
Rs.41,404.80p. Learned counsel for the Appellant submitted
that the order of the Commissioner, Workmen's Compensation,
B Gulbarga, was liable to be restored.

8. As opposed to the aforesaid submissions made on
behalf of the Appellant, it was submitted by Ms. Hetu Arora,
learned counsel appearing on behalf of the Respondent-
C Corporation, that in addition to the compensation awarded to
the Appellant, he had also been given alternative employment
as Peon in the establishment of the Corporation and was also
being paid the same salary which he would have drawn if he
had continued to be a Driver, so that despite his accident, the
Appellant did not face any loss of earnings. She also submitted
D that since the Commissioner, Workmen's Compensation, had
erroneously confused the amount of functional disability of the
Appellant as against his permanent disability, the
Commissioner ought to have taken the percentage of the
disability of the accident of 20% and not 85%, after taking into
E consideration the fact that the Appellant had been provided with
employment as a Peon in the Respondent-Corporation, where
he was drawing the same salary as earlier. Learned counsel
for the Respondent submitted that the Appellant was also
entitled to interest as awarded on the reduced amount only after
F 30 days from the date of the passing of the Award. On the
aforesaid findings, the learned Single Judge allowed the appeal
in part and modified the Award passed by the Commissioner,
Workmen's Compensation, Gulbarga from Rs.1,75,970/-
awarded by the Commissioner to Rs.41,405/- awarded by the
G High Court.

9. While computing compensation for disabilities being
suffered by a workman in the case of his employment, it is the
functional disability resulting in loss of earning capacity which
is the criteria which is followed in assessing compensation. The
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Workmen's Compensation Act, 1923, hereinafter referred to as "the 1923 Act", has its own formula in computing compensation on account of injuries suffered during employment which is reproduced in Schedule I to the said Act. In Part II of the said Schedule the loss of earning capacity in terms of percentage has been directly related to the loss of any of the limbs and parts thereof, both of the upper limbs as also the lower limbs. Loss of earning capacity is commensurate to the injuries suffered and the loss of earning capacity as a result thereof.

10. In the instant case, it is no doubt true that the Appellant has lost his capacity to function as a driver, but with the help of external aids his mobility has, to some extent, been restored and he is able to perform work which is suitable to his physical condition after the accident.

11. In the Appellant's case, by virtue of the injuries suffered by him, his disablement as far as driving a vehicle is concerned is 100%, but that is not the measure of loss of his earning capacity. The Commissioner, Workmen's Compensation, seems to have confused the issue by combining both functional disability and permanent disability in arriving at the figure of 85% by way of loss of earning capacity and has, therefore, arrived at a sum of Rs.1,75,970/- towards compensation. The High Court, on the other hand, realizing the mistake committed by the Commissioner, assessed the loss of earning capacity as 20% instead of 85% and reduced the compensation payable from Rs.1,75,970/- to Rs.41,404.80p. and awarded interest on the compensation amount only after 30 days of passing of the Award.

12. Section 4 of the 1923 Act which had been referred to by Mr. Basava Prabhu S. Patil, learned Senior Counsel for the Appellant, provides for the amount of compensation payable to a workman in different contingencies. Section 4(1)(c)(ii) provides as follows :

"4. Amount of compensation. - (1) Subject to the provisions H

A of this Act, the amount of compensation shall be as follows, namely:-

(a)

(b)

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(c) Where permanent partial disablement result from the injury

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(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

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(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 (as assessed by the qualified medical practitioner) permanently caused by the injury;

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Explanation I.- Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

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Explanation II.- In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;”

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13. The aforesaid provision would indicate that where a workman suffers injury which is not specified in Schedule I to the Act, compensation is to be assessed on such percentage of the compensation payable in the case of permanent total

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disablement as is proportionate to the loss of earning capacity, permanently caused by the injury as assessed by a qualified medical practitioner. Since in the instant case, the nature of injury suffered by the Appellant is not specified in Schedule I, the compensation has necessarily to be assessed on the basis of the loss of earning capacity caused by the injury which could amount to 100% disablement in a given case. In the instant case, however, although the Appellant has lost the use of his legs for the purpose of driving a vehicle, which could be said to be total disablement so far as driving of a vehicle is concerned, he is in a position to earn a living other than by functioning as a driver, which, in fact, he is currently doing, having been posted as a Peon by the Respondent.

14. Accordingly, apart from the fact that the Commissioner, Workmen's Compensation, had confused the concept of functional disablement with permanent disablement in arriving at the figure of 85% loss of earning capacity, we also have to take into consideration the fact that the injury suffered by the Appellant did not disable him permanently from earning his living other than as a driver. We, therefore, are of the view that the percentage of functional disablement has to be modified, since the Appellant is permanently disabled as far as earning a livelihood as a driver is concerned.

15. As far as the question of payment of interest is concerned, reference may be made to Section 4-A of the 1923 Act, which is reproduced hereinbelow:

"4A. Compensation to be paid when due and penalty for default.- (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the

A workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall –

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(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

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(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty :

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Provided that an order for the payment of Penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

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Explanation.- For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

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(3A) The interest and the penalty payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be."

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16. It will be evident that compensation assessed under Section 4 is to be paid as soon as it falls due and in case of default in payment of the compensation due under the Act within one month from the date when it falls due, the Commissioner

would be entitled to direct payment of simple interest on the amount of the arrears @12% per annum or at such higher rates which do not exceed the maximum lending rates of any scheduled Bank as may be specified by the Central Government. Both the Commissioner, Workmen's Compensation, as also the High Court, therefore, rightly held that interest under the 1923 Act cannot be claimed from the date of the filing of the application, but only after a default is committed in respect of the payment of compensation within 30 days from the date on which the payment becomes due.

17. We are satisfied that the impugned order of the High Court was only an attempt to correct the erroneous interpretation of Part II of Schedule I of the Workmen's Compensation Act, 1923, by the Commissioner, Workmen's Compensation. The loss of earning capacity has to be computed keeping in mind the alternate employment given to the Appellant on the same salary as he was enjoying while performing the duty of a bus driver. The same cannot be ignored in computing the amount of compensation which the Appellant was entitled to.

18. In that view of the matter, we are in agreement with the order passed by the High Court, but we are of the view that the percentage of functional disablement has to be modified from 20% to at least 35%, having regard to the Appellant's mobility on account of the medical treatment received after the accident and also because of the Appellant's loss of future earnings and also promotion.

19. We, therefore, maintain the order of the High Court and direct that the Appellant be provided with compensation on the basis of functional disability to the extent of 35% and not 20% as indicated by the High Court.

20. The appeal is, accordingly, disposed of. There will be no order as to costs.

B.B.B.

Appeal disposed of.