

GOLLA RAJANNA ETC. ETC.

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v.

THE DIVISIONAL MANAGER AND ANOTHER, ETC. ETC.

(Civil Appeal Nos. 11114-11119 of 2016)

NOVEMBER 23, 2016

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[KURIAN JOSEPH AND R.F. NARIMAN, JJ.]

Workmen's Compensation Act, 1923:

s.30 – Appeals – Limited jurisdiction of High Court – Disability due to accident – Compensation awarded to appellants by Workmen's Compensation Commissioner reduced by High Court making a fresh assessment with respect to percentage of disability – On appeal, held: Under the Scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts, therefore, the High Court had no competence to re-appreciate the evidence and record its own findings on percentage of disability for which also there was no basis.

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Scope of appeal – Parliament has restricted the scope of appeal only to substantial questions of law, the Act being a welfare legislation.

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Allowing the appeals, the Court

HELD: 1.1 The Workmen's Compensation Commissioner on the basis of evidence returned a finding on the nature of injury and the percentage of disability being purely a question of fact. It was not the case of insurance company that the finding was based on no evidence at all or that it was perverse. Under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923, the percentage of permanent disability needs to be assessed by a qualified medical practitioner. It was not the case of the respondents that the doctor who issued the disability certificate was not a qualified medical practitioner as defined under the Act. Thus the Workmen's Compensation Commissioner passed the order based on the disability certificate which was duly proved. [Para 10][473-D-F]

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1.2 Under the Scheme of the Act, the Workmen's

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A Compensation Commissioner is the last authority on facts. The Parliament thought it fit to restrict the scope of appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court missed this crucial question of limited jurisdiction and ventured to re-appreciate the evidence recording its own findings on percentage of disability for which also there was no basis. The whole exercise made by the High Court was not within the competence of the High Court under Section 30 of the Act. [Para 11][473-F-G]

B CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 11114-11119 of 2016.

C From the Judgment and Order dated 20.11.2012 of the High Court of Karnataka Circuit Bench, Dharwad in M. F. A. No. 22543/2009, C/WMFANos. 22544, 22545, 22546, 22547 and 22548 of 2009 (WC).

D Manjunath Meled, Ms. Vijayalaxmi Udupudi, Anil Kumar, Advs., for the Appellant.

Harsh Kumar Gautam, Ms. Sumi P. S., Ms. Suman Lata, Binay Kumar Das, Advs., for the Respondents.

E The Judgment of the Court was delivered by

KURIAN, J.: 1. Leave granted.

F 2. The appellants are aggrieved by the order passed by the High Court whereby the compensation awarded to them has been drastically reduced. The High Court re-appreciated the evidence and substituted its own views with that of the Workmen's Compensation Commissioner and made a fresh assesment.

3. By order dated 16.02.2009, the Labour Officer cum Workmen's Compensation Commissioner, Division No. II, Bellary passed the following order:

G "In considering the employment of the petitioners, documents produced before the court and the evidence of the doctor, considering the disablement decided by the doctor, and considering that the respondent No.2, failed to prove the allegations denied by the respondent No.2, I decide that the petitioner No.1 has suffered 35% of the disablement, the

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second petitioner has suffered 35% of the disablement, the third petitioner has suffered 35% of disablement, the 4th and 5th petitioners have suffered 40% of disablement each and 6th petitioner has suffered 35% of the disablement with subsequent loss of earnings and decided the above issue No.1 in favour of the petitioners.”

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4. Accordingly, the appellants were awarded the compensation based on their wages.

5. The Insurance Company challenged the order passed by the Workmen’s Compensation Commissioner, under Section 30(1) of The Workmen’s Compensation Act, 1923 (hereinafter referred to as “the Act”) mainly on the ground that the injuries had not been proved before the Workmen’s Compensation Commissioner, and therefore, the appellants were not entitled to the compensation as awarded by the Workmen’s Compensation Commissioner. The High Court has clearly held that ... “the dispute is in respect of the nature of injuries suffered by the claimants”.

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6. The relevant consideration by the High Court appears at paragraph-9 of the impugned judgment:

“9. ... this Court is of the opinion that the accident appears to be true involving the offending lorry, but, the injuries said to have suffered by the claimants is not established, in as much as, there is no document on record to substantiate the same, except the wound certificates issued by the Community Health Centre immediately after the accident. However, the said document also appears to be fabricated and fails in as much as, the X-ray stated in each of these certificate is not proved by any one of the petitioners before the Commissioner. Assuming for a moment that the X-ray of the claimant was taken, where it was taken and when it was taken is not forthcoming. Admittedly, the Community Health Centre, are not provided with x-ray machine so as to take the X-ray and assess the nature of injuries suffered by the claimants. In that view of the matter, this Court feel that the entire exercise by the petitioners before the Commissioner is to create a make-believe situation to show that indeed in the said accident said to have taken place on

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A 15.8.2008 (*sic*) they have suffered serious injuries which
 was resulted in permanent disability to whole body of each
 ranging from 35% to 40% resulting in loss of earning
 capacity to equal percentage. In that view of the matter,
 this Court feel that the grounds urged by the Insurance
 B Company in these appeals appears to be true and correct
 which is required to be upheld by this Court. “

7. The High Court went further to hold that on the basis of the
 available evidence, the disability would only be to the extent of 5% of
 the whole body resulting in 5% of the loss of earning capacity. Paragraph-
 C 10 of the impugned judgment deals with the issue, which reads as follows:

“10. In that view of the matter, the common judgment and
 order passed by the Tribunal in these petitions before the
 Commissioner is required to be modified having regard to
 the nature of injuries and disability suffered by the claimants
 D due to the accident. Accordingly, this Court holds that all
 the petitioners before the Tribunal have suffered disability
 to the extent of 5% to the whole body resulting in 5% loss
 of earning capacity.”

8. Accordingly, the compensation has been reworked. Thus,
 E aggrieved, the appellants are before this Court.

9. Section 30 of the Act provides for appeals to the High Court.
 To the extent, the provision reads as follows:

“**30. Appeals.**-(1) An appeal shall lie to the High Court
 from the following orders of a Commissioner, namely:-

F (a) an order awarding as compensation a lump sum whether
 by way of redemption of a half-monthly payment or
 otherwise or disallowing a claim in full or in part for a lump
 sum;

G [(aa) an order awarding interest or penalty under section
 4A;]

(b) an order refusing to allow redemption of a half- monthly
 payment;

(c) an order providing for the distribution of compensation
 among the dependants of a deceased workman, or

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disallowing any claim of a person alleging himself to be such dependant; A

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions: B

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:” C

(Emphasis supplied)

10. The Workmen’s Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of disability. It is purely a question of fact. There is no case for the insurance company that the finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c)(ii) of the Act, the percentage of permanent disability needs to be assessed only by a qualified medical practitioner. There is no case for the respondents that the doctor who issued the disability certificate is not a qualified medical practitioner, as defined under the Act. Thus, the Workmen’s Compensation Commissioner has passed the order based on the certificate of disability issued by the doctor and which has been duly proved before the Workmen’s Compensation Commissioner. D
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11. Under the scheme of the Act, the Workmen’s Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act. G

12. Accordingly, the appeals are allowed. The impugned common H

A judgment passed by the High Court is set aside. The order dated 16.02.2009 of the Labour Officer cum Workmen's Compensation Commissioner, Division No. II, Bellary in W.C.A. Nos. 229/2008 to 234/2008 is restored.

13. There shall be no orders as to costs.

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Divya Pandey

Appeals allowed.