2025 INSC 591

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……2025
(@SPECIAL LEAVE PETITION (C) NO.4974 OF 2022)

KAMAL DEV PRASAD …APPELLANT

VERSUS

MAHESH FORGE …RESPONDENT

J U D G M E N T

K. VINOD CHANDRAN, J.

1. Leave granted.

2. The appeal is filed against the reduction of the disability as per the Employees' Compensation Act, 1923 (as it is presently named). The Commissioner under the Act allowed 100% disability and adopted the factor of 213.57 thus determining the total compensation to be ₹ 3,20,355/-. The Commissioner also awarded 12% interest from the date of accident and 50% penalty i.e. ₹

1,60,178/- for reason of the employer having not paid the compensation within one month from the accident. The employer filed an appeal, the order in which is impugned herein by the employee.

3. The only contention taken is that Part II of Schedule I of the Act lists out the injuries and the percentage of loss of earning capacity is statutorily determined. The appellant is entitled to only 34% was the contention of the employer which was accepted by the High Court.

4. We heard learned counsel, Ms. Vidya Vijaysinh Pawar appearing for the appellant employee and learned counsel, Mr. Amol Chitale appearing for the respondent employer.

5. The appellant was an employee from 05.04.2002 and at the relevant time was engaged to operate a forging machine. The employee was also paid a salary of ₹ 2,500/- p.m. as recorded in the registers

maintained by the employer. On 06.11.2004, late in the night, while operating the machine, a part of the machine fell on his hand and while he was removing the band of the handle lock, his right hand was caught in the machine. He was admitted to a hospital and remained there till 24.12.2004. At the hospital, he underwent surgery and lost one phalanx of the little finger, two phalanges of the ring finger, three phalanges of the middle finger and two and a half phalanges of the index finger.

6. The loss of phalanges of each of the fingers are specifically noticed in the Schedule to the Act wherein the loss of earning capacity also has been determined, totalling which, loss of earning capacity occasioned to the employee is determined. The High Court found that the disability is only to the extent of 34%. Many decisions with respect to functional disability were referred to and they were distinguished on the

ground that those were with respect to motor accident claims whereas in the present case, the loss has been statutorily determined. It was also noticed that there was no disability certificate issued by a doctor or a Medical Board.

7. We have to first notice that contrary to what the High Court found, in ***Oriental Insurance Co. Ltd. v. Mohd. Nasir***[1], this Court held that both the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988 are beneficial legislations aimed at providing expeditious relief to the victims of accidents; in the former to employees and in the latter to third parties. It was also held that the statutes hence deserve liberal construction. True, this Court also held in the cited decision that when injuries are specified in Schedule I and the mode and manner for calculating the amount of compensation also stipulated, the same would be

[1] (2009) 6 SCC 280

applicable. This Court had also noticed that the Motor Vehicles Act created a legal fiction insofar as permitting reference to Schedule I of the Workmen's Compensation Act, 1923 (as it was named then) which correlates the permanent disability, at least in certain cases, with the functional disability. After noticing Explanation 1 to Section 4 of the Act of 1923, this Court, in the cited case, also held that *'It is also beyond any doubt or dispute that while determining the amount of loss of earning capacity, the Tribunal or the High Court must record reasons for arriving at their conclusion.'(sic-para27).* Hence it is not as if there can never be a departure from the Schedule in deciding the functional disability, which it has been recognised would in certain cases have a corelation with the physical disability.

8. In the present case, we have a situation in which not one finger was affected but four fingers of the same hand. The employee also has a contention that he

can no more work as a forging machine operator, the functionality for which he has been deprived, by reason of the accident. We have to first notice that there is no loss assessment for amputation of two and a half phalanges of the index finger as per the schedule, which in any event has to be taken as a whole loss for which the disability is 14%. Hence, in any event the disability even as determined by the Schedule to the Act would be 37% aggregating the total loss.

9. In this context, we have to notice Explanation 1 to sub-Section (1) (c) of Section 4 which provides that when more than one injury is caused in the same accident the amount of compensation payable under the Act shall be aggregated, but not to the extent of such aggregation exceeding the amount which would have been payable if permanent total disablement had resulted from the injuries.

10. The disability as determined by the statute is for the specific loss of a phalanx or a finger and in the event of more than one such loss it cannot be said that a mere aggregation would determine the actual loss. True a medical certificate had not been produced which would have aided the Court in assessing the functional disability. However, the fact remains that the appellants working hand has been seriously mutilated by the loss of one or more phalanges of four fingers. The middle and index finger having been disabled completely and the ring finger and the little finger having lost two phalanges and one phalanx respectively, functionally it is difficult for the right hand to be used with the same grip as available prior to the accident. Though a 100% disability cannot be assessed, insofar as the mutilation of the one hand which is also the operational hand, the right hand, we are inclined to determine the loss at 50%.

11. The loss thus would be accessed as ₹ 2,500/- x 60% x 213.57 which comes to ₹ 3,20,355/-. Fifty percent of the same would come to ₹ 1,60,177.5. The employee would also be entitled to 12% interest from the date of accident and 50% of the penalty; i.e. ₹ 80,088.75/- as penalty. If the amounts as directed by the High Court has been paid, then the excess amount shall be paid with interest at 12% from the date of accident and half of the enhanced amount as penalty.

12. The Appeal stands allowed with the above directions.

13. Pending application(s), if any, shall stand disposed of.

……, J.
[SUDHANSHU DHULIA]

……, J.
[K. VINOD CHANDRAN]

NEW DELHI;
APRIL 29, 2025.