IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

124

FAO-1814-2022 (O&M)
Date of decision : 24.02.2025

ICICI Lombard General Insurance Company Ltd. ..... Appellant

versus

Wazid and another ..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for respondent No.1.

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PANKAJ JAIN, J. (Oral)

1. Insurance company is in appeal.

2. Challenge is to the order dated 02.09.2021 passed by Commissioner, under Employee's Compensation Act, 1923, Circle-IV, Gurugram.

3. Claimant filed claim application seeking compensation for the injuries suffered by him in an accident during the course of employment while working as driver on vehicle bearing No.NL-01/AB-5823. The Commissioner after appreciating evidence, came to the conclusion that the employment and the accident stands proved. In view of the injuries suffered by the claimant, he has been rendered permanently disabled to the extent of 21%. Movement of right elbow and wrist stands restricted. The same was proved by testimony of AW-2 Dr. Pankaj Agarwal, member of the Medical Board that examined the

claimant. As per opinion of Medical Board, the claimant has been rendered disabled from pursuing his vocation of driver. Commissioner assessed the functional disability of the claimant to the extent of 100% and awarded compensation of Rs.9,67,968/- apart from medical expenses.

4. The order is being assailed on the ground that the employer-employee relationship was not proved and that the claimant having been rendered disabled to the extent of 21%, Commissioner erred in treating his functional disability to the extent of 100%.

5. I have heard counsel for the appellant and have carefully gone through the records of the case.

6. In terms of Section 2(d) of the 1923 Act, the contract of employment can be oral or in writing. The same can be expressed or implied. The accident stands proved by way of documentary evidence Ex.P-1 to Ex.P-52. The documents proved that the claimant suffered injuries in the accident in question while driving. Thus, this Court finds that the Commissioner rightly held the claimant to be employee who was working as driver on the vehicle at the time of accident.

7. Issue regarding functional disability already stands answered by four Judge Bench in the case in the case of ***Pratap Narain Singh Deo vs. Srinivas Sabata (1976) 1 SCC 289*** wherein the Supreme Court observed as under:-

> "5. The expression "total disablement" has been defined in section 2(1)(l) of the Act as follows:
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> " "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a 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:
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> "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."
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> 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." ”

8. The aforesaid ratio of law has been reiterated by Supreme Court in the case of ***Indra Bai vs. Oriental Insurance Company Ltd. and another (2023) 8 SCC 217***, observing as under:-

> “28. In light of the aforesaid decisions and the definition of the term “total disablement” as provided by clause (l) of sub-section (1) of Section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (i.e., workman) has incurred total disablement. Thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under Section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of Section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement.
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> 29. In Mohd. Nasir (supra), which has been relied by the High Court, the workman was a cleaner. He had suffered fracture in the leg. It was held that such injury would not amount to permanent loss of the use of the entire leg. Hence, the

disablement was found partial and not total."

9. In view of above, finding no question of law involved, this Court finds no merit in the present appeal, the same is ordered to be dismissed.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

24.02.2025
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No