

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.449 of 2012

Sri Bhupendra Singh Rawal and othersAppellants

Versus

Sri Ravindra Prakash Pant and anotherRespondents

Present:- Mr. Neeraj Uprety, Advocate for the appellants.
Mr. Naresh Pant (through video conferencing) and Mr. Raunak Pant,
Advocate for respondent no.2.

JUDGMENT

Per: Hon'ble Ravindra Maithani, J.

Present appeal is preferred under Section 30 of The Employee's Compensation Act, 1923 ("the Act") against the judgment and award dated 29.05.2012, passed in Workman Compensation Case No.05 of 2011, Shri Bhupendra Singh Rawal Vs. Shri Ravindra Prakash Pant and another, by the court of Workman Compensation Commissioner/District Magistrate, Pithoragarh. By it, the appellant ("the claimant") has been awarded Rs.2,39,457/- compensation.

2. Heard learned counsel for the parties and perused the record.

3. The claimant filed the claim petition on the ground that he was working as a driver in a vehicle bearing Registration No.UP03 4759 ("the vehicle"), owned by the respondent no.1. He was appointed in the year 2009 as driver by the respondent no.1 and getting Rs.4,000/- per month salary. On 08.03.2010, when he was driving the vehicle, it met with an accident, due to which, the claimant sustained grievous injuries. The report of the incident was also lodged. Due to the injuries sustained by the claimant, he

became 75% permanent disabled. He was given a disability certificate by the Medical Board. Now, he is not able to move. He cannot drive the vehicle. He cannot get the employment now. He has not been paid the compensation.

4. The respondent no.1, the owner of the vehicle has admitted that the claimant was the driver of the vehicle owned by him and it met with an accident on 08.03.2010. He has also admitted that the claimant was getting Rs.4,000/- per month as salary. It is the claim of the respondent no.1 that the vehicle was insured with respondent no.2/the Insurance Company. Therefore, in case of any compensation, it is the respondent no.2, who is liable to pay.

5. The respondent no.2 has also filed separate objections in the claim petition. It was stated that it is the claimant to satisfy that the vehicle was being driven with all the valid documents and the driver was not under any intoxication and he had the valid driving license. Multiple other objections have been raised.

6. Based on the pleadings of the parties, on 05.08.2011, the following issues were framed in the claim petition.

- (i) Whether the driver of the vehicle Bhupendra Singh Rawat sustained grievous injuries in the accident of the vehicle bearing Registration No.UP03 4759 on 08.03.2010 at Munsiyari near Naya Basti?
- (ii) What was the age of the claimant at the time of accident and what was his monthly salary?
- (iii) Whether at the time of accident the vehicle had all the valid documents (insurance, driving license, etc.)?

(iv) How much per cent permanent disability was incurred by the claimant due to accident?

(v) What relief, if any, is the claimant entitled and from which of the respondents?

7. In the impugned order, on issue no.1 it was held that the claimant sustained injuries due to the accident of the vehicle on 08.03.2010.

8. On issue no.2, it was held that at the time of accident, the age of the claimant was 46 years of age and was drawing Rs.4,000/- per month salary.

9. On issue no.3, it was held that the vehicle had all the valid documents and it had not violated the terms and conditions of the policy.

10. On issue no.4, it was held that the claimant is 75% permanent disabled and his loss of earning capacity is 60%.

11. On issue no.5, the court calculated the compensation according to the Schedule of the Act, which was Rs.3,99,096/- and 60% of it i.e. Rs.2,39,457/- was awarded as compensation.

12. The appeal under the Act is admitted on the substantial questions of law. It was not admitted as such when the appeal was admitted, but on 13.07.2017, the court recorded that the appeal shall be deemed to have been admitted on the substantial question of law framed in the memo of appeal, which are as follows:-

- 1) Whether the Workmen Compensation Commissioner can pass any order beyond the statutory provisions of Workmen Compensation Act?

2) Whether the driver who lost his job due to accident and got 75% permanent disability become 100% disabled or not?

13. Learned counsel for the appellant submits that the identical controversy has already been decided by this Court on 17.04.2026 in Appeal from Order No.286 of 2012, Sri Bbendra Kumar alias Bablu Vs. Sri Kirtiballabh Upadhyaya and another. He would submit that the appellant was driver. Due to accident, he sustained multiple fractures. He is 75% disabled. Now, he cannot work as a driver. The witnesses have stated about it, which is not rebutted. Hence, the loss of earning capacity is 100% and, accordingly, the compensation ought to have been awarded. The court below has wrongly awarded 60% of the total compensation calculated.

14. In fact, in the instant case, on behalf of the appellant, he himself has been examined as PW1. He has stated that on 08.03.2010, while he was driving the vehicle, he met with an accident, due to which, he sustained injuries. He has been incapable to do any act now. He is not able to drive the vehicle. The Medical Board has given him 75% permanent disability certificate.

15. PW2 Dr. K.S. Mehta is the doctor, who has issued disability certificate to the appellant. He has stated that the appellant is 75% disabled. According to the doctor, even the appellant is not able to do his day-to-day work.

16. On behalf of the respondent DW1 Ravindra Prakash Pant has been examined. He has admitted that the appellant was his driver. He met with an accident and he sustained injuries.

17. Learned counsel for the respondent no.2/the insurance company submits that the loss of earning capacity has been calculated as 60% by the impugned order.

18. The first substantial question of law as framed in the appeal is:- Whether the Workmen Compensation Commissioner can pass an order beyond the statutory provisions of Workmen's Compensation Act, 1923?" This question does not require any deliberation. The answer is in negative. The Workmen Compensation Commissioner cannot pass order beyond the statutory provisions. The substantial question of law no.1 is decided accordingly.

19. The Second substantial question of law as framed in the appeal is:- (2) Whether the driver, who lost his job due to the accident and got 75% permanent disability and became 100% disabled or not?

20. In fact, the essence of this substantial question of law is, as to whether, due to the accident, the appellant has 100% loss of earning capacity. In fact, this issue does not require multiple deliberations.

21. In the case of Bbendra Kumar (*Supra*), this Court has discussed the law on this point in an identical issue. In that case, the disability was 30%, but the person was a driver. His sight of right eye was gone. He was not able to drive the vehicle. Under

those facts and circumstances in the case of Bbendra Kumar (Supra), the Court in paras 7 to 19 observed as follows:-

“7. Learned Counsel for the appellant submits that Section 2(l) of the Act defines total disability, which relates to Schedule I, Part-I and Part-II. According to him, in the instant case, as per Schedule-I, Part-I of the Act, the percentage of loss of earning capacity of the claimant is 100% because he has lost the sight to the certain extent as he is unable to perform the work of driver now.

8. In addition to it, he would submit that the impugned order provides interest at the rate of 8% which it is argued, is not in accordance to the provisions of 4-A(3) of the Act, which provides that if the compensation is not paid within a month from the date it fell due, the rate of interest at the rate of 12% shall be provided.

9. On the other hand, learned counsel for the respondent no.1 submits that the claimant was being paid Rs.4,000/- per month salary by the respondent no.1.

10. Learned counsel for the respondent no.2/The United India Insurance Co. Ltd. (“Insurance Company”) submits that, in fact, according to the claimant he had 30% sight loss, which falls under clauses 25 and 26 of Part-II, Schedule-I of the Act and the loss of earning capacity may accordingly be calculated at 30%.

11. Section 2(l) of the Act defines total disablement as follows:-

“2(l) “total disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates a employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more”

12. Before discussion is made further, it is required to be seen as to what the witnesses have stated. The claimant had 30% Permanent Disability Certificate. As the witness, the claimant appeared as PW1. He has reiterated his version. According to him on 30.11.2011, he was given 30% Permanent Disability Certificate of his hand and similarly, for the loss of sight, he was given 30% Permanent Disability Certificate. He submits that earlier he was driving a vehicle he had valid driving license. But now, he cannot

drive a vehicle. His license is not being renewed due to his disablement.

13. PW2 Dr. K.S. Mehta had given 30% Disability Certificate to the claimant. According to him, the right arm of the claimant had fractured. It was fixed with a plate and now, the claimant cannot drive a vehicle. Similarly, PW3 Dr. D.N. Mourya has also given 30% Disability Certificate for sight loss of the claimant. He has also stated that now, the claimant would not be able to drive a vehicle.

14. DW1 Kirtiballabh Upadhyaya is respondent no.1 and he has also stated that he was paying Rs.3,000/- per month salary to the claimant and Rs.50/- per day was also paid to him. He has clarified that in his objections, Rs.2,000/- per month salary has wrongly been stated, it is Rs.3,000/- per month.

15. In fact, learned counsel for the appellant submits that though the Disability Certificate is to the extent of 30% with regard to the fractured of the right arm and loss of sight, but he would submit that it has resulted into 100% of the loss of earning capacity of the claimant because now, he is not able to drive; his driving license is not being renewed. He submits that the claimant is entitled to be considered that he incurred 100% loss of earning capacity.

16. In support of his contention, learned counsel for the appellant refers to the principle of law as laid down by Hon'ble the Supreme Court in the case of S. Suresh Vs. Oriental Insurance Company Limited and another, (2010)13 SCC 777.

17. In the case of S. Suresh (*Supra*), the claimant had suffered serious injuries in an accident, but his right leg had to be completely amputated, just below the knee. He claimed 100% loss of earning, which was provided to him by the Commissioner. But, in appeal, the High Court reduced the compensation by 50%. Before the Hon'ble Supreme Court it is argued that the claimant in the case of S. Suresh (*Supra*) was driver. The loss of right leg *ipso facto* means a total disability, as understood in terms of Section 2(1)(l) of the Act and as such, the compensation payable to the claimant had to be considered on that basis.

18. In the case of S. Suresh (*Supra*), reliance was placed on the principle of law, as laid down in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and another, (1976)1 SCC 289. In this case, the Hon'ble Supreme Court has held as below:-

“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. ”

19. Relying on the principle of law as laid down in the case of Pratap Narain Singh Deo (*Supra*), the Hon’ble Supreme Court in the case of S. Suresh (*Supra*), held that; **“on account of amputation of his right leg below knee he is rendered unfit for the work of driver, which he was performing at the time of accident resulting capacity as lorry driver, more so, when he is disqualified even getting a driving license.....”** and accordingly, the compensation awarded by the Commissioner was restored.”

22. The facts of this case are also identical. In the present matter also, the appellant was a driver. He has become 75% disabled. According to PW2 Dr. K.S. Mehta, he is not even able to do his day-to-day work. As PW1, the appellant has stated that he cannot drive the vehicle now. His earning capacity has a loss of 100%. Accordingly, this Court is of the view that the total compensation, as calculated on issue no.5 i.e. Rs.3,99,096/- ought to have been awarded to the appellant.

23. The impugned award also gives interest at the rate of 8%. It is also not in accordance with the provisions of the Act. Section 4-A(3) of the Act provides that if the compensation is not paid within a month from the date it fell due, the appellant shall be

entitled to the interest at the rate of 12% per annum. It is also settled that the compensation falls due from the date of accident.

24. Accordingly, the appeal deserves to be allowed.

25. The appeal is allowed.

26. The claimant is entitled to Rs.3,99,096/- as compensation. The accident took place on 08.03.2010. Therefore, one month after this date, the appellant is also entitled to get interest at the rate of 12% on this amount. Accordingly, w.e.f. 07.04.2010 the claimant is also entitled to get interest at the rate of 12% per annum on the awarded amount i.e. on Rs.3,99,096/-.

(Ravindra Maithani, J.)

15.05.2026

Sanjay