



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.07.2026
Pronounced on : 20.07.2026
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+ **FAO 69/2021**

UNITED INDIA INSURANCE COMPANY LTD.Appellant
Through: Mr. Ravi Sabharwal, Advocate

versus

SH. DIGAMBAR & ANR.Respondents
Through: Mr. Kishore Kumar & Mr. Ramesh
Sharma, Advocates for respondent No.1
Mr. S.N. Parashar and Mr. Ritik Singh, Advocates
for respondent No.2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as the 'EC Act') assailing the award dated 12.03.2020 passed by the learned Commissioner, Employees' Compensation, South District, Pushpa Bhawan, New Delhi in Case No. CEC/SD/I/32/2018/5777 titled 'Sh. Digambar v. Sh. Satya Prakash Pandey & Anr.', whereby compensation was awarded in favour of respondent No.1/claimant by treating him to have suffered 100% loss of earning capacity on account of the injuries sustained during the course of his employment.



2. Briefly stated, the claimant, namely Sh. *Digambar*, instituted a claim petition before the learned Commissioner alleging that he was employed as a conductor on vehicle bearing registration No. DL-01-VC-0533, owned by respondent No.2 and insured with the present appellant. It was pleaded that he was drawing wages of Rs.350/- per day and, while discharging his duties on 26.02.2018 at about 7:30 p.m., the vehicle developed a mechanical defect near *Nehru Place, New Delhi* and broke down. According to the claimant, while attempting to inspect the engine by opening the bonnet of the vehicle, his left hand got 'damaged' in the fan belt, resulting in grievous injuries to the fingers of his left hand. He was immediately removed to *AIIMS, New Delhi*, where he underwent medical treatment. It was further alleged that the claimant and the driver had informed respondent no. 1 about the technical difficulties of the bus about 15 days prior to the date of the said accident. The injuries ultimately necessitated amputation of four fingers of the left hand.

3. The defence primarily raised by the appellant was that the claimant had failed to establish the relationship of employer and employee and that the alleged accident did not arise out of and in the course of employment. The appellant further questioned the extent of disability claimed by the claimant and disputed the quantum of compensation sought.

Learned Commissioner had framed the following issues:-

- (i) the existence of employer-employee relationship between the claimant and respondent No.2;
- (ii) whether the claimant sustained injuries arising out of and during the course of employment; and
- (iii) whether the claimant was entitled to compensation and, if so, to



what amount.

4. Upon appreciation of the material placed on record, the learned Commissioner returned findings in favour of the claimant on all material issues. It was held that the claimant had succeeded in establishing that he was employed as a conductor under respondent no.2 and that the accident in question had occurred during and in the course of his employment. While assessing the consequences of the injuries suffered by the claimant, the learned Commissioner came to the conclusion that, notwithstanding the percentage of permanent physical disability reflected in the medical record, the injuries had rendered the claimant incapable of performing the work which he was engaged to perform prior to the accident and, consequently, treated the claimant as having suffered 100% loss of earning capacity for the purpose of determining compensation under the EC Act. Compensation together with statutory interest was accordingly awarded in favour of the claimant. The employer was also directed to deposit penalty in accordance with the provisions of the Act.

5. Aggrieved thereby, the appellant-insurance company instituted the present appeal. Learned counsel appearing on behalf of the appellant submits that the impugned award suffers from errors of fact and law inasmuch as the learned Commissioner failed to properly appreciate the evidence on record while returning the findings on the employer-employee relationship, determination of monthly wages and assessment of compensation. It is further submitted that the learned Commissioner erroneously assessed the claimant's monthly wages in the absence of any documentary proof and, more importantly, proceeded to assess the claimant's loss of earning capacity at 100% despite the injury being one of



amputation of four fingers of the left hand, contrary to the statutory scheme under Section 4 read with Schedule I of the EC Act. It is, accordingly, submitted that the impugned award warrants interference by this Court.

6 *Per contra*, learned counsel appearing on behalf of respondent no.1 supports the impugned award and submits that the learned Commissioner has, upon appreciation of the oral and documentary evidence, rightly held that the appellant had failed to rebut the claimant's case regarding the employer-employee relationship and the accident having arisen out of and in the course of employment. It is submitted that the evidence *Yograj Singh* corroborated the claimant's version and, that the learned Commissioner rightly drew the necessary inference against the appellant.

7. I have considered the rival submissions advanced on behalf of the parties and examined the record.

8. In the present case, the appellant questioned the findings recorded by the learned Commissioner regarding the existence of employer-employee relationship as well as the occurrence of the accident during the course of employment. However, the learned Commissioner, upon appreciation of the oral and documentary evidence, including the testimony of the claimant and employer-*Yograj Singh*, returned a categorical finding that the claimant was working as a conductor under respondent no.2 and sustained injuries arising out of and during the course of his employment. No material has been placed before this Court to demonstrate that the aforesaid findings suffer from perversity or are otherwise liable to be interfered with in exercise of jurisdiction under Section 30 of the Act. Accordingly, the findings regarding employer-employee relationship and the occurrence of the accident are affirmed.



9. The only surviving issue, therefore, is whether the learned Commissioner was justified in assessing the claimant's loss of earning capacity at 100%.

10. In the present case, the claimant admittedly suffered loss of four fingers of his left hand. Such injury is specifically covered under Entry 7 of Part II of Schedule I, under the heading “*Permanent Partial Disablement*” which prescribes 50% loss of earning capacity. Although the percentage specified in the Schedule is not invariably conclusive and the Commissioner may, in an appropriate case, assess a higher functional loss having regard to the nature of the employee's vocation and the evidence on record, any departure from the statutory assessment must be supported by cogent evidence demonstrating that the injury has resulted in a greater loss of earning capacity than that contemplated by the Schedule. In the present case, no such evidence has been brought on record. The learned Commissioner, while assessing the claimant's loss of earning capacity at 100%, principally relied upon the decision of the Supreme Court in Pratap Narain Singh Deo v. Srinivas Sabata¹. However, the said decision turned on its own facts, where the injured workman was a carpenter, whose vocation necessarily required full and effective use of his hand and the injury rendered him incapable of performing the very work for which he had been employed. The said judgment cannot be construed to mean that every amputation of fingers would, irrespective of the nature of employment and the evidence on record, automatically result in 100% loss of earning capacity. The assessment necessarily depends upon the nature of employment, the functional consequences of the injury and the evidence available on record.

¹ (1976) 1 SCC 289



Subsequently, in *Oriental Insurance Co. Ltd. v. Mohd. Nasir*², the Supreme Court reiterated that compensation under the EC Act is determined with reference to loss of earning capacity and not merely the percentage of physical disability. Likewise, in *National Insurance Co. Ltd. v. Mubasir Ahmed*³, it was held that physical disability and loss of earning capacity are distinct concepts and the latter must be assessed on the basis of evidence.

11. The learned Commissioner, relying principally upon *Pratap Narain Singh Deo (supra)*, treated the claimant as having suffered 100% loss of earning capacity. However, the award does not disclose any independent analysis demonstrating how the claimant had become completely incapable of undertaking all gainful employment. Except for the claimant's assertion, there is no evidence establishing total functional incapacity.

12. This Court is, therefore, of the considered opinion that while the injuries undoubtedly caused permanent Partial disability, however, the material on record does not justify the conclusion that he suffered 100% loss of earning capacity. The learned Commissioner consequently applied an incorrect legal standard while assessing compensation. Balancing the nature of the claimant's employment, the injuries suffered, the statutory framework under the EC Act and the evidence available on record, this Court is of the view that the claimant's loss of earning capacity deserves to be assessed at 50% instead of 100%.

13. Accordingly, the impugned award dated 12.03.2020 is modified to the limited extent that the claimant's loss of earning capacity shall stand assessed at 50%. The learned Commissioner shall recompute the

² (2009) 6 SCC 280

³ (2007) 2 SCC 349



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compensation payable together with statutory interest in accordance with the provisions of the EC Act, after giving due adjustment to the amount already deposited and/or released pursuant to the interim orders passed by this Court. For the aforesaid purpose, list before the learned Commissioner on 01.08.2026.

14. The appeal is partly allowed in the aforesaid terms. Pending stay application, i.e., CM.APPL. 6680/2021, also stands disposed of.

(MANOJ KUMAR OHRI)
JUDGE

JULY 20, 2026

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