

[\[Employee's Compensation Act\] Bar On Commissioner's Power To Conduct Enquiry Imposed By 2010 Amendment Act Is Prospective: Karnataka HC](#)

2022 LiveLaw (Kar) 502

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

**H.P. SANDESH; J.**

2 December, 2022

M.F.A. NO.1234/2014 (WC) C/W. M.F.A. NO.2414/2014 (WC) IN M.F.A. NO.1234/2014  
**HANUMANTHAPPA versus SHRIRAM GENERAL INSURANCE CO. LTD.**

*Appellant by V.B. Siddaramaiah, Advocate; Respondents by O. Mahesh, Advocate*

**J U D G M E N T**

These two appeals are filed by the claimant and Insurance Company challenging the judgment and award dated 19.08.2013 in WCA. No. Kaa Aa Daa/Kaa Na Pa/CR-45/2011 passed by the Labour Officer and Commissioner for Workmen, Davanagere District, Davanagere ('the Commissioner' for short) questioning the quantum and liability.

2. The parties are referred to as per their original rankings before the Tribunal to avoid confusion and for the convenience of the Court.

3. The claimant, in the appeal in M.F.A.1234/2014 would contend that the Commissioner has committed an error in taking the disability at 80% as against 85% assessed by the Doctor, who has been examined as P.W.3 and ought to have taken the disability at 100% when the right hand of the driver, who is having inter-state driving license for HTV and HPV is amputated. It is also contended that the Commissioner ought to have taken the income at Rs.10,000/- per month and instead, the Commissioner taken the income at Rs.4,000/- per month and failed to take note of the daily allowance of Rs.100/- per day. It is further contended that the Commissioner failed to take note of Exs.P10 to P12 which clearly establishes that he is suffering from functional disability of 100% and photographs Exs.P10 to 12 discloses that an amputation was done to his right hand.

4. The learned counsel for the claimant in his oral submission also vehemently contend that the contention of the Insurance Company that the claimant himself is negligent and he is entitled for compensation cannot be accepted.

5. The learned counsel for the claimant, in support of his argument relied upon the judgment of this Court passed in **M.F.A.NO.1936/2017** dated **24.07.2019** and brought to notice of this Court Para No.16, wherein this Court has discussed with regard to the claim made under M.V. Act as well as the E.C. Act and held that negligence on the part of the workmen attracts only under the provisions of the Motor Vehicles Act,1988 and the said provision has no bearing on the facts of the case on hand. The provisions of the E.C. Act does not envisage a situation where the compensation payable to an injured or deceased workman can be reduced on account of contributory negligence.

6. The counsel also relied upon the judgment of the Apex Court in the case of **JAYA BISWAL AND OTHERS VS. BRANCH MANAGER, IFFCO TOKIO GENERAL INSURANCE COMPANY LIMITED AND ANOTHER** reported in **(2016) 11 SCC 201**, wherein also the Apex Court held that the compensation under Employees Compensation Act, 1923 cannot be reduced for contributory negligence and E.C. Act and M.V. Act is distinguished in this regard.

7. Per contra, learned counsel appearing for the appellant-Insurance Company in M.F.A.No.2414/2014 in his argument vehemently contend that the Commissioner has no

jurisdiction to entertain the claim petition in view of the amendment brought into the Employee's Compensation Act, 1923 as amended by Act 45 of 2009 which came into force with effect from 18.01.2010 and in view of Section 20 of the said Act in particular. The counsel also would submit that the percentage of disability taken by the Commissioner is on the higher side i.e., 80% for amputation of his right hand and though the Doctor has been examined as P.W.3, his evidence is very clear that the injured-claimant was negligent and if proper treatment is taken, he would not have been subjected for amputation and the same has not been considered by the Commissioner and computing the disability at the rate of 80% is not justified and the compensation awarded towards medical expenses is also on the higher side. The counsel would further contend that though P.W.1 admitted in his cross-examination that he could examine his employer, failed to examine his employer and in the absence of positive evidence, the question of proving the factum of employment and relationship of employer and employee does not arise.

**8.** In reply to the argument of the learned counsel appearing for the appellant-Insurance Company, the learned counsel appearing for the claimant would contend that as per Schedule I, Part-II of the Employee's Compensation Act, 1923, the percentage of loss of earning capacity for amputation through shoulder joint is given as 90% and the Commissioner has committed an error in taking the same at 80%. The counsel would further contend that with regard to the jurisdiction is concerned, the Court taken up the matter on 19.08.2013 and the notification was issued subsequently on 23.01.2014, after disposal of the case and hence, the very contention with regard to jurisdiction cannot be accepted.

**9.** Having heard the respective counsel and also on perusal of the material available on record, the points that would arise for consideration of this Court are:

(i) Whether the Commissioner had power or authority to hold enquiry proceedings under the provisions of the Employee's Compensation Act, 1923 amended vide Act 45 of 2009 in view of amendment to Section 20 of the said Act?

(ii) Whether the Commissioner committed an error in taking the disability at 80% instead of 90% as contended by the claimant?

(iii) Whether the Commissioner committed an error in taking the income at Rs.4,000/- per month instead of Rs.10,000/- per month and not considering the material on record?

(iv) What order?

**Point No.(i)**

**10.** The main contention of the appellant-Insurance Company is that, vide Act 45 of 2009, the provision of the Act was amended and in view of Section 20 of the said Act which came into force with effect from 18.01.2010, the Commissioner has no jurisdiction to consider the matter. The said contention cannot be accepted for the reason that, though the Act was amended, the notification was issued by the Government only on 23.01.2014 conferring powers to the concerned Courts to deal with the claims made under the Employee's Compensation Act, 1923 in view of Section 20 of the Act. In the case on hand, the judgment and award was passed on 19.08.2013 and the notification was issued on 23.01.2014 i.e., subsequent to the disposal of the case. Hence, the contention of the learned counsel appearing for the Insurance Company that the Commissioner was not having jurisdiction cannot be accepted.

11. The learned counsel appearing for the Insurance Company has also placed the Court copy of the orders passed in W.P.No.16769/2013 dated 22.08.2013, 27.08.2013 and 21.01.2014 wherein, a question has arisen with regard to competence of the Commissioner to consider the matter and the proceedings before the Commissioner appointed under Section 20 of the said Act was stayed on 27.08.2013. But, in the case on hand, the matter was decided on merits prior to the said date i.e., on 19.08.2013 itself. Hence, the contention of the learned counsel appearing for the Insurance Company that the Commissioner had no jurisdiction to consider the matter will not come to the aid of the Insurance Company. Hence, I answer point No.(i) as 'negative'.

**Point Nos.(ii) and (iii)**

12. Having heard the respective counsel and also on perusal of the material available on record, it is not in dispute that the accident has occurred on 10.10.2010 and the right hand of the claimant was amputated. But, the main contention of the learned counsel appearing for the Insurance Company is that the said amputation was on account of negligence on the part of the claimant himself. No doubt, in the cross-examination of P.W.3, it is elicited that amputation was done on account of gangrene and when he had come to treatment, it had reached the final stage. It is also elicited from the mouth of P.W.3 that before coming to the hospital, if proper treatment is taken with the Specialist, it would not have reached the final stage. But, in the cross-examination, he categorically says that, if amputation was not done, it would have caused his life. It is suggested that, he is suffering from gangrene because of not providing proper treatment at KLE Hospital and the witness says that he cannot tell the same.

13. I have already pointed out that the injured was taken to Government Hospital, Ramanagara immediately after the accident and thereafter, he was shifted to KLE Hospital. The wound certificate at Ex.P4 discloses that he was taken to Government Hospital, Ramanagara on the same day of the accident at 12.35 p.m. and he was discharged and thereafter, he was taken to KLE Hospital and the wound certificate at Ex.P5 confirms the same and he was treated in the hospital as an inpatient.

14. P.W.1 also in his evidence clearly says that he was an inpatient at KLE Hospital for a period of 25 days and the same is not disputed in the cross-examination of P.W.1. Ex.P7-Discharge card discloses that the claimant was admitted at S.S. Institute of Medical Sciences and Research Centre, Davanagere on 12.11.2010 and he was subjected to surgery on 15.11.2010 i.e., amputation done in respect of his right upper limb and wound debridement was also done on 29.11.2010 and again skin grafting was done on 06.12.2010 and he was discharged from the hospital on 17.12.2010 and he was inpatient for more than 1 month 5 days. When the claimant has taken treatment immediately after the accident at Government Hospital, Ramanagara and KLE Hospital and in the cross-examination also, he denies the suggestion that there was negligence on the part of the Doctors at KLE Hospital and when he was under continuous treatment, the very contention of the Insurance Company that due to the negligence on the part of the claimant himself, it has resulted in gangrene cannot be accepted. Though, gangrene was developed, the same was on account of accidental injuries he has sustained and amputation was done within 1 month, 5 days of the accidental injuries. Hence, the very contention that amputation was done on account of his own negligence cannot be accepted and if the claimant has not taken treatment immediately after the accident, then, there would have been force in the argument of the learned counsel appearing for the Insurance Company.

15. The Apex Court also in the judgment referred (supra) in **JAYA BISWAL'S** case while distinguishing the claim made under M.V. Act as well as the Employee's Compensation

Act, held that negligence on the part of the claimant cannot be considered and compensation cannot be reduced for contributory negligence.

**16.** Now, the question that would arise for consideration of this Court is whether the compensation awarded by the Commissioner is on the higher side or lower side. The main contention of the Insurance Company is that the disability taken by the Commissioner at 80% is on the higher side. On the other hand, it is the contention of the learned counsel for the claimant that, as a result of amputation of his right upper limb, he completely lost his earning capacity and functional disability would be 100% and the same would have to be taken. It is also contended that, even in terms of the Schedule I, Part-II of list of injuries, the percentage of loss of earning capacity would be 90% and not 80% as held by the Commissioner.

**17.** Having perused the material available on record i.e., both the photographs as well as the evidence available on record, the Doctor, who has been examined as P.W.2 has assessed the disability at 85% and the Doctor, who amputated his right upper limb has also been examined as P.W.3 and the photographs which have been produced before the Court discloses that his right hand was amputated at the shoulder joint in terms of Ex.P11 and having seen the same, the amputation is below shoulder with stump less than [20.32 Cms.] from tip of acromion as per Schedule I, Part-II is 80%. Having considered the photograph at Ex.P11, there is a stump and the same is not an amputation at the shoulder joint and hence, the Commissioner has rightly taken the disability at 80% for calculating the loss of earning capacity. No doubt, the job of a Driver requires hand to drive the vehicle, but it is not a claim under the M.V. Act and it is a claim under the Employee's Compensation Act, 1923 and when the schedule injury is taken into consideration and assessed the percentage of disability for calculating the loss of earning capacity, the very contention of the learned counsel appearing for the claimant that the Commissioner ought to have considered the 100% disability under the Employee's Compensation Act, 1923 cannot be accepted. Hence, I do not find any force in the contention of the learned counsel appearing for the claimant that the Commissioner ought to have taken 100% disability.

**18.** Now, coming to the aspect of taking the income at Rs.4,000/- per month, as on the date of the accident, as per the notification, the income provided is Rs.4,000/- per month and it is the contention of the claimant that he was earning Rs.10,000/- and also getting Rs.100/- per day as bata and in order to substantiate the same, no document is placed before the Court and the employer is also not examined and in the cross-examination of the claimant, he categorically admits that he could examine the employer, but not examined him.

**19.** The Apex Court, in the judgment in **JAYA BISWAL's** case referred (supra) observed that the claimant has not produced any documents in support of monthly wage but, vehicle had a national permit and appellants/claimants claiming that total monthly earning was Rs.10,000/- and though vehicle owner disputed the monthly income of the deceased, he had not maintained register as required under Section 13(A) of the Payment of Wages Act and monthly wages of Rs.10,000/- claimed by the appellants was accepted and its 50% was multiplied with factor of 213.57 and awarded a compensation of Rs.10,67,850/-. As per the driving license, the age of the deceased was 27 years.

**20.** In the case on hand also, the employer has not appeared and contested the matter and also not disputed the claim of the claimant and even in a case of disputed claim, the Apex Court in **JAYA BISWAL's** case held that when the employer has not maintained the register, the claim of the claimant has to be accepted and in the case on hand, the claimant was having inter-state driving license to drive HTV and HPV and hence, the judgment of

the Apex Court is aptly applicable. Hence, by taking the income at Rs.10,000/- per month, since he is a Driver having inter-state driving license for HTV and HPV, this Court has to reassess the compensation.

**21.** Having considered the income at Rs.10,000/- per month and since, it is a case of amputation, 60% of his income has to be taken which comes to Rs.6,000/- per month. Having taken the income at Rs.6,000/- per month, the disability at 80% and the relevant factor 205.95, the loss of future earning capacity works out to Rs.9,88,560/- (6,000 x 205.95 x 80/100). Apart from that, the claimant is also entitled for medical expenses which has been considered by the Commissioner to the tune of Rs.1,14,049/-. Hence, in all, the claimant is entitled for compensation of Rs.11,02,609/-.

**Point No.(iv)**

**22.** In view of the discussions made above, I pass the following:

**ORDER**

(i) The appeal filed by the Insurance Company in MFA No.2414/2014 is dismissed. The appeal filed by the claimant in M.F.A.No.1234/2014 is allowed-in-part.

(ii) The Judgment and Award of the Tribunal dated 19.08.2013 passed in WCA. No. Kaa Aa Daa/Kaa Na Pa/CR-45/2011, is modified enhancing the compensation to Rs.11,02,609/- as against Rs.5,09,473/- awarded by the Commissioner with interest at the rate of 12% per annum after 30 days of the accident till its realization.

(iii) The Insurance Company is directed to deposit the enhanced compensation amount within six weeks from today.

(v) The amount in deposit is ordered to be transmitted to the concerned Tribunal, forthwith.

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