

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6867 OF 2021

[@ SPECIAL LEAVE PETITION (C) NO. 2621 OF 2019]

SHRI SALIM

Appellant (s)

VERSUS

NEW INDIA ASSURANCE COMPANY LIMITED & ANR.

Respondent(s)

O R D E R

Leave granted.

The present appeal is directed against an order passed by the High Court of Karnataka, Bench at Dharwad, on 27.03.2018, whereby an Award passed by the Commissioner under the Employees' Compensation Act, 1923, awarding a sum of Rs. 5,46,711/- along with interest at the rate of 6% was modified to that of Rs. 1,47,124/- along with interest at the rate of 12%.

The Award was modified keeping in view the fact that the disability suffered by the appellant, as assessed by the Commissioner, is not 45%, but 15% and, therefore, the High Court reduced the amount of compensation awarded. The sole reasoning given by the High Court to reject the medical evidence is that the Doctor has assessed the disability as per the norms of World Health Organisation [WHO] and such norms emanate from socio-economic factors that operate in advanced countries and not in the country like India.

We find that the entire reasoning of the High Court suffers from patent illegality. As per Dr. Sangayya, the disability of 45% was assessed after going through ALMCOI and WHO manuals. Such medical studies are not restricted to the advanced countries but in respect of the entire world.

Therefore, reducing the extent of disability on the ground that the WHO norms are for the advanced countries and not in respect of India, is patently not sustainable.

Consequently, the impugned order passed by the High Court dated 27.03.2018 is set aside to the extent of disability assessed at 15% and the Award of Rs. 5,46,711/- made by the Commissioner on the basis of 45% disability suffered by the appellant is restored.

As per Section 4A Sub-Section 3 of Employees Compensation (Amendment) Act, 1995 [Act 30 of 1995], the rate of interest prescribed is 12%. Sub-Section 3 of Section 4A is extracted hereinbelow :-

"4A. Compensation to be paid when due and penalty for default -

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall - (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central

Government, by notification in the Official Gazette, on the amount due; and(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent, of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

Therefore, amount of compensation of Rs.5,46,711/- is allowed along with interest at the rate of 12%, the rate of interest awarded by High Court. The amount of compensation shall be paid within two months from today.

In view of above, the appeal is allowed.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[HEMANT GUPTA]

.....J.
[V. RAMASUBRAMANIAN]

New Delhi;
NOVEMBER 15, 2021.

ITEM NO.23 Court 11 (Video Conferencing) SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 2621/2019

(Arising out of impugned final judgment and order dated 27-03-2018 in MFA No. 100144/2018 (WC) passed by the High Court Of Karnataka Circuit Bench At Dharwad)

SHRI SALIM Petitioner(s)

VERSUS

NEW INDIA ASSURANCE COMPANY LIMITED & ANR. Respondent(s)

Date : 15-11-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s) Mr. Manjunath Meled, Adv.
Mr. Sandeep Sharma, Adv.
Mr. Ganesh Kumar R., AOR

For Respondent(s) Mr. J. P. N. Shahi, Adv.
Mr. Rameshwar Prasad Goyal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(RENU BALA GAMBHIR)
COURT MASTER

(Signed order is placed on the file)