

THE
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APPELLATE CIVIL

Before Mr. Justice Ismail

JAGANNATH BRIJRAJ OIL MILL (OPPOSITE PARTY) *v.*
SEOMBAR (APPLICANT)*

1938
September,
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*Workmen's Compensation Act (VIII of 1923), section 2(g);
schedule I—Permanent partial disablement—Loss of use of
index and middle fingers—Not necessarily loss of use of
fore-arm or hand—Arrears of pay cannot be awarded under
the Act.*

Where the injuries to a workman permanently deprived him of the use of the index and middle fingers of the left hand, but according to the medical evidence he had not suffered permanent incapacity of the left arm below the elbow and could hold things with his thumb and the two end fingers though his earning capacity had been reduced in any job where the left hand was needed:

Held that he was entitled to compensation, under schedule I of the Workmen's Compensation Act, for the loss of the two fingers only and not for loss of use of the arm or hand. The utility of the hand is undoubtedly diminished by the loss of use of a finger, and it is conceivable that in some cases the injury to one finger only may result in the loss of the use of the hand or the arm; but ordinarily where the injury is confined to one limb or member only it cannot be suggested that the injured party is entitled to any compensation other than that which is provided for the loss of that limb or member alone. It is always a matter of evidence whether the injury to one limb or member has caused additional incapacity which would entitle the workman to claim compensation for loss of use of some other limb or member.

*First Appeal No. 214 of 1937, from an order of L. Owen, Labour Commissioner of Cawnpore, dated the 28th of June, 1937.

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There is no provision in the Workmen's Compensation Act which empowers the Commissioner to award arrears of pay to the injured workman. Such a remedy may be pursued by the workman in proceedings other than those under the Act.

Mr. K. D. Malaviya, for the appellant.

Mr. B. S. Darbari, for the respondent.

ISMAL, J:—The facts that have given rise to this appeal are not disputed. Seombar (respondent) was employed as "Linedar" in the Jagannath Brijraj Oil Mill. He entered the service of the appellant some 14 or 15 years ago and was drawing a salary of Rs.25 per mensem. It is common ground that on 5th November, 1936, he received certain injuries in the performance of his duty as Linedar which deprived him of the use of the index and middle fingers of the left hand. Seombar made an application under section 4 of Act VIII of 1923 to the Commissioner of Labour, Cawnpore. The application was contested on several grounds but the Commissioner upon a consideration of the evidence allowed the application for compensation and awarded Rs.567 as compensation for the disablement which the applicant had suffered and Rs.62-8 on account of arrears of pay during the period the applicant was in hospital. The Commissioner further allowed the applicant Rs.30 pleader's fee. The opposite party has now come to this Court in appeal. Under section 30 of the Act an appeal shall lie to the High Court only in certain specified cases, provided that a substantial question of law is involved in the appeal. Learned counsel for the appellant contends that the Commissioner has erred in allowing the applicant compensation for loss of left arm below the elbow as on the evidence and the finding it is proved that the applicant suffered loss of the index finger and the middle finger only. It is further argued that the Commissioner has misinterpreted the relevant provisions of the Act. In order to determine this question I propose referring to the statement of the medical officer whose testimony has been

accepted by the Commissioner. Dr. J. C. Arron who was examined by the Commissioner to prove the injuries of the applicant stated: "The earning capacity of this man has been reduced in any job where the left hand is needed. He has not suffered permanent incapacity of the left arm below the elbow. He can discharge any duty that does not require the use of the left hand. He can hold things with his thumb and the two end fingers. The middle finger is of very little use . . ." The question is whether on this evidence which was accepted by the Commissioner the applicant would be entitled to the compensation awarded to him. " 'Partial disablement' means . . . where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time." In the present case there is no suggestion that because of the injuries to the two fingers the applicant has lost the use of the arm or the hand. The utility of the hand is undoubtedly diminished and consequently the earning capacity has also been reduced. This consequence however will always follow whenever a labourer has lost the use of one or more fingers. It is conceivable that in some cases the injury to one finger only may result in the loss of the use of the hand or the arm. But in ordinary cases where the injury is confined to one limb only it cannot be suggested that the injured party is entitled to any compensation other than that which is provided for the loss of that limb alone. If such were not the intention of the Act it would be superfluous to allow a definite percentage of loss of earning capacity for the injury to every limb. It is significant that in the apportionment of loss the index finger is given a percentage of 10 while any finger other than index finger is given a percentage of 5 only. The minute details enumerated in schedule I clearly indicate that in case of injuries that result in permanent partial disablement the injured party is entitled to such compensation as is specifically prescribed

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in the schedule for such injuries. It will always be a matter of evidence whether the injury to one limb has caused additional incapacity which would entitle the labourer to claim compensation for total loss to some other member or limb. The definition in section 2(g) of "partial disablement" indicates that the earning capacity of the labourer will be reduced in every employment which he was capable of undertaking at the time. In every case where a person has lost one or two fingers he cannot have the same use of his hand as he enjoyed before the accident. Having regard to the medical evidence and the definition of the expression "partial disablement" it is impossible to hold that the respondent can be awarded compensation for the loss of left arm below the elbow. The Commissioner in deciding this question felt some difficulty. After quoting the statement of Dr. J. C. Arron the Commissioner remarked as follows: "It seems to me that the doctor is technically correct in both these apparently contradictory remarks. The arm below the elbow means the fore-arm as well as the hand. The fore-arm is all right and the hand is fit for use to the extent that he can hold things lightly with his thumb and the two end fingers." On these findings it is manifest that the compensation awarded to the applicant should have been only for the loss of the two fingers. The Commissioner further observes: "But the question with which we are concerned for compensation purposes is whether the left arm below the elbow is permanently incapacitated to the extent of making it useless for future work. In my opinion this has happened." These observations appear to me somewhat inconsistent with the remarks quoted above. The Commissioner further remarked: "The medical officer in his evidence states that the earning capacity of this man has been reduced in any job where the left hand is needed". In my opinion, for the purposes of compensation the respondent has not suffered permanent disablement of the left arm below the elbow.

I have already referred to the definition of "partial disablement" in the Act which lays down that the earning capacity in consequence of the accident must be reduced in order to bring the accident within the meaning of "partial disablement". Nothing more has happened here nor has the Commissioner held that the arm or the hand of the applicant suffered in any way on account of loss of the two fingers. It is impossible to reconcile the concluding portion of the observations of the Commissioner with the earlier findings and the definition of "partial disablement" given in the Act. In the note under schedule I it is provided: "Complete and permanent loss of the use of any limb or member referred to in this schedule shall be deemed to be the equivalent of the loss of that limb or member". There is no evidence whatsoever that there has been complete and permanent loss of the left arm below the elbow. In my opinion the appeal involves a substantial question of law. The principle on which compensation is to be awarded has to be determined in accordance with the provisions of the Act and cannot be departed from on grounds of sentiment. Much as one may deplore the unfortunate consequences to the applicant as a result of the accident it is impossible for a court applying the law to go beyond the rules laid down for awarding compensation under the Act. I therefore hold that the applicant is entitled to be compensated for the loss of his index and middle fingers which should be on the basis of 15 per cent. of his total earning for 42 months. This comes to Rs.157-8.

The next question pressed in appeal is that the Commissioner was not entitled to award Rs.62-8-0 on account of arrears of pay. I agree with this contention. The Act prescribes compensation to be paid in certain circumstances. It is not open to the Commissioner to award any damages or any other compensation except that provided by the Act. The labourer, if he is so advised, can seek his remedy elsewhere but in the present

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proceedings it is impossible to award anything more than what has been awarded above.

The next question pressed by learned counsel refers to the amount of costs. I am in entire agreement with the Labour Commissioner that the attitude of the appellant during the inquiry was undesirable and it is proper that full costs should have been awarded to the respondent. I therefore maintain the order of costs of the Commissioner.

In the result I modify the order of the Commissioner and reduce the amount of compensation to Rs.157-8-0. I maintain the order for Rs.30 on account of costs incurred in the court below. Costs of this appeal will be borne by the parties. Out of the amount deposited by the appellant the aforesaid sums will be paid to the labourer and the rest will be refunded to the appellant.

MISCELLANEOUS CIVIL

Before Mr. Justice Harries

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September,
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OFFICIAL LIQUIDATORS, MUFASSIL BANK (APPLICANTS)
v. JUGAL KISHORE AND OTHERS (OPPOSITE PARTIES)*

Companies Act (VII of 1913), section 235—Misfeasance proceedings against a director—Death of director—Continuation of proceedings against heirs—Succession Act (XXXIX of 1925), section 306—“Executors or administrators” does not include heirs as such—“Special proceeding” includes Misfeasance proceeding—Maxim, Actio personalis moritur cum persona—Interpretation of statutes—Words have the same meaning throughout the statute.

Proceedings under section 235 of the Companies Act against a director cannot, after the death of the director during the proceedings, be continued against his heirs as representing his estate.

Section 306 of the Succession Act does not apply to such a case; for, although such proceedings come under the phrase “special proceeding” in the section, the section gives a right to continue proceedings only as against an executor or