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Narula, J.

"Purchase Money" in section 7(3) of the Electricity Act would include each of the amounts mentioned in the first and second proviso to section 7(1) of that Act. It cannot be argued that the creditors of the assessee can reach that part of the amount which is paid under the first proviso but not the sum of 20 per cent thereon paid in pursuance of an agreement under the second proviso. This also strengthens the view we are taking.

We think that it is not correct to call the amount paid by the Government to the assessee under the second proviso to sub-section (1) of section 7 of the Electricity Act as 'Solatium' and that in fact the amount which may become payable and did in this case become payable under that provision is a part of the amount paid for the sale of the undertaking.

We, therefore, hold that the word "amount" used in section 10(2) (vii) of the Income-Tax Act includes the total amount paid by the Government to the assessee by virtue of para 9 of the licence and in pursuance of section 7 of the Electricity Act including what is called "their fair market value" under the first proviso and the added value upto 20 per cent by virtue of the second proviso to sub-section (1) of section 7 of the Electricity Act. In these circumstances we answer question No. 2 also in the affirmative, i.e., in favour of the Revenue.

All the three questions referred to us are, therefore, answered in favour of the Commissioner of Income-Tax. The parties are, however, left to bear their own costs in this case.

K. S. K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

BHAGAT SINGH,—*Appellant*

versus

PUNJAB STATE,—*Respondent*

F.A.O. No. 106 of 1963.

1965

April, 19th.

Workmen's Compensation Act (VIII of 1923)—S. 4(1)(c) and Schedule IV— Workman, suffering permanent partial disablement declared to be 20 per cent, discharged from service—Whether entitled to compensation as in the case of total disablement or proportionate to the permanent disability caused—Compensation payable— How to be determined.

Held, that under section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923, the loss of earning capacity permanently caused by the injury, which is not specified in Schedule 1, has to be determined before it can be decided as to how much amount of compensation the injured workman is entitled to. The extent of the permanent disability declared by the doctor only relates to his physical disability, whereas under the provisions of section 4(1)(c)(ii), the loss of earning capacity permanently caused by the injury has to be determined. In cases of permanent partial disablement, what the Commissioner has to find for the purpose of assessing compensation is the fact as to whether the earning capacity of the injured workman has been reduced in every employment, which he was capable of undertaking at the time of the accident and not merely the particular job in which he was employed at that time.

First Appeal from the order of Shri Ram Pal Singh, Senior Sub-Judge, Hoshiarpur, and Commissioner, under the Workman's Compensation Act, dated the 4th May, 1963, *holding that the applicant is entitled to receive Rs* 980 (*less Rs* 184, *already received by him*).

NAGINDER SINGH AND I. S. KARWAL, ADVOCATES, for the Petitioner.

M. R. AGNIHOTRI, ADVOCATE *for the* ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Pandit, J

PANDIT, J.—This is a first appeal filed by Bhagat Singh, under section 30 of the Workmen's Compensation Act 8 of 1923 (hereinafter referred to as the Act) against the order of the learned Senior Subordinate Judge, Hoshiarpur, who was acting as the Commissioner under the Act, holding that the appellant was entitled to receive only Rs. 980 as against Rs. 4,900 claimed by him as compensation.

On 23rd February, 1962, the appellant was working at a machine in connection with the excavation work of the Bhakra-Nangal Project, when a big stone fell on him, which fractured his head, resulting in his permanent disability as a workman. He remained in Nangal Hospital from 23rd February, 1962 to 1st September, 1962. Later on, he was declared permanently unfit and was discharged from service. At that time he was 28 years old and his monthly wages were Rs. 105. His case was that he was entitled to receive compensation amounting to Rs. 4,900 on account of permanent disablement as mentioned in section 4(1)(c) (ii) read with Schedule IV of the Act.

The position of the Punjab State, respondent, was that since the appellant's permanent disability was only 20 per cent, as mentioned in the medical certificate, he was entitled to 20 per cent of the compensation payable for permanent total disablement, which came to Rs. 980.

The learned Commissioner came to the conclusion that the medical report, Exhibit P. 1, showed that the permanent disability of the appellant was only 20 per cent and not total. There was no evidence to show that this medical report was in any way wrong. That being so, according to the learned Commissioner, the permanent disability was 20 per cent and not total. Under section 4(1)(c) read with Schedule IV of the Act, the appellant was, therefore, entitled to 20 per cent of the compensation payable for permanent total disablement, that is, Rs. 980.

Learned counsel for the appellant submitted that the Commissioner had misinterpreted the provisions of section 4 (1) (c) and Schedule IV of the Act. According to the medical report, it was true that his client's permanent disability was mentioned as 20 per cent, but it was further stated therein that he was unfit for duty. He was, as a matter of fact, discharged from service. Under these circumstances, his loss of earning capacity was 100 per cent and he was, therefore, entitled to the full compensation payable in the case of permanent total disablement, that is, Rs. 4,900.

The facts are not disputed, namely, that it was a case of permanent partial disablement, that the appellant was earning Rs. 105 per month; that the Doctor had stated that his permanent disability was 20 per cent, but he was declared to be unfit for duty; and that he was discharged from service. It is common ground that if it was a case of permanent total disablement, the appellant would have got Rs. 4,900. It is also not controverted that the injury, which the appellant received, is not specified in Schedule I of the Act. The question then arises that under these circumstances, is the appellant entitled to the total amount of Rs. 4,900, as contended by him, or he can claim only 20 per cent of the same, as is the position of the Punjab State? This case is, admittedly, covered by the provisions of section 4(1) (c) (ii), which are as follows :—

"S. 4. (1). Subject to the provisions of this Act, the

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amount of compensation shall be as follows, namely :—

* * * * *
* * * * *

(c) Where permanent partial disablement results from the injury—

* * * * *
* * * * *

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury;

* * * * *
* * * * *

A plain reading of these provisions will show that where a permanent partial disablement results from an injury which is not specified in Schedule I, then in the case of that injured person, the amount of compensation would be the sum payable in the case of permanent total disablement divided by the loss of earning capacity permanently caused by the injury. The amount of compensation payable in the case of permanent total disablement is mentioned in Schedule IV and the same in the present case would be Rs. 4,900. In the case of the appellant, so far as the loss of the earning capacity permanently caused by the injury is concerned, no finding has been given by the learned Commissioner. The loss of earning capacity due to the injuries specified in Schedule I has been given in column 3 of that Schedule, but with regard to the injuries which are not mentioned in that Schedule, a finding has to be given regarding the loss of earning capacity, before it can be decided as to how much amount of compensation the injured workman is entitled to. In the present case, it is true that the Doctor has stated that the permanent disability of the appellant is 20 per cent, but that relates to his physical disability, whereas under the provisions of section 4(1) (c) (ii) the loss of earning capacity permanently caused by the injury has to be determined. This has not been done in the present case.

In cases of permanent partial disablement, what the Commissioner has to find for the purpose or assessing compensation is the fact as to whether the earning capacity of the injured workman has been reduced in every employment, which he was capable of undertaking at the time of the accident and not merely the particular job in which he was employed at that time. In the present case, all that has been established on the record is that the appellant was discharged from service and he was declared to be unfit for duty and his permanent disability was recorded as 20 per cent by the Doctor. On these facts, the loss of earning capacity permanently caused by the injury cannot be settled. The view that I have taken is supported by a Division Bench consisting of Derbyshire, C. J. and D. K. Mukherjee, J., in *Agent, East India Railway* v. *Mauris Cecil Ryan,* (1), where it was held thus :—

> "In awarding compensation under section 4(1) (c) (ii), Workmen's Compensation Act, what has to be estimated is the loss of the Workman's earning capacity caused by the injury and not the loss of his physical capacity. A surgeon might well estimate the loss of his physical capacity for work, but the loss of his earning capacity must be estimated by some other person and the best estimate can be given by the employer himself who has the opportunity of seeing the workmen's work before and after the accident."

In view of what I have said above, the appeal is accepted and the case is remitted to the learned Commissioner for deciding the same afresh in the light of the observations made above. There will, however, be no order as to costs.

B. R. T.

LETTERS PATENT APPEAL

Before D. Falshow, C.J. and Harbans Singh, J.

BUDAN,—*Appellant*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 401 of 1964.

1965

April, 20th.

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*Proviso to S.* 6(1)—*Woman contesting election to office of Sarpanch securing more votes than the woman contesting election to the office of panch—Whether entitled to be co-opted.*

(1) A.I.R. 1937 Cal. 526.