

1960

Present : Weerasooriya, J.

H. M. KIRIMUDIENSE, Appellant, and S. D. DAVID, Respondent

*S. C. 6—Workmen's Compensation C 30/6484/58**Workmen's Compensation Ordinance (Cap. 117)—Permanent partial disablement—
Computation of compensation—Section 6 (1) (c) (i), Schedules I and IV.*

Where a workman suffered permanent partial disablement in consequence of the loss of the use of the middle, index and ring fingers of his right hand but still had the full use of the thumb and limited use of the little finger—

Held, that the workman could not be said to have suffered the complete and permanent loss of the use of his right hand so as to bring his case within the terms of the explanatory note in Schedule I of the Workmen's Compensation Ordinance.

A PPEAL under the Workmen's Compensation Ordinance.

Sir Lalita Rajapakse, Q.C., with *E. L. P. Mendis*, for Respondent Appellant.

D. R. P. Goonetilleke, with *S. M. H. de Silva*, for Applicant-Respondent

Cur. adv. vult.

February 9, 1960. WEERASOORIYA, J.—

The main ground on which this appeal was pressed by Sir Lalita Rajapakse is that only a sum of Rs. 1,225/- should have been awarded as compensation to the applicant-respondent as against a sum of Rs. 2,205/-

awarded by the Assistant Commissioner. The medical evidence is that the injuries suffered by the applicant-respondent necessitated amputation of the middle and index fingers of his right hand, that the ring finger, though saved from amputation, is "as good as useless" and that the little finger is slightly impaired.

As this is a case of permanent partial disablement, the method of computation of compensation as set out in Section 6 (1) C (i) read with Schedules I and IV of the Workmen's Compensation Ordinance (Cap. 117) would be applicable. Under Schedule I the loss of earning capacity resulting from the amputation of the middle and index fingers and the loss of the use of the ring finger would be only 20%. Counsel for the appellant was agreeable on compassionate grounds to the addition of a further 5% loss of earning capacity in respect of the impairment to the little finger, and he contends that the correct award should, therefore, be Rs. 1,225/-, being 25% of Rs. 4,900/- which under Schedule IV is the compensation that would have been payable to the applicant-respondent had he been totally disabled.

The sum of Rs. 2,205/- awarded by the Assistant Commissioner is 45% of Rs. 4,900. He accepted the evidence of Dr. de Fonseka that the maximum loss of earning capacity is 45%. At first Dr. de Fonseka put the loss of earning capacity at 65%, but he admitted that in doing so he "did not pay much attention to the percentages in Schedule I". It would seem that even the revised figure of 45% has been arrived at without much attention to the percentages in Schedule I.

The applicant-respondent's counsel contended, in support of the Assistant Commissioner's award, that the reduction in earning capacity should be assessed on the basis of the loss of the use of the applicant's right arm below the elbow. He relied on a passage in the Doctor's evidence where the injuries are referred to as "loss of the right arm below the elbow". But this evidence is flatly contradicted by his earlier evidence that the applicant would still be able to hold with his right hand an object "which is not in violent motion", and that he would have assessed the loss of earning capacity at 80% if the applicant had lost his arm below the elbow.

Under Schedule I the loss of earning capacity resulting from loss of the right arm below the elbow is 60%. There is an explanatory note to the Schedule which reads as follows: "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". I do not think that the applicant-respondent, who still has the full use of the thumb and the limited use of the little finger, can be said to have suffered the complete and permanent loss of the use of the right hand so as to bring his case within the terms of the explanatory note.

In my opinion the Assistant Commissioner's award on the basis of a 45% loss in earning capacity cannot be supported, and is set aside. I award the applicant-respondent as compensation a sum of Rs. 1,225/-. While the appeal has been successful to this extent, seeing that in the

petition of appeal the appellant took up the position that no compensation at all should have been awarded, he will have only half his costs of appeal. In regard to costs of the proceedings before the Assistant Commissioner, counsel for the appellant has drawn my attention to the fact that on the 13th November, 1958, which was one of the dates of inquiry, a postponement was granted at the request of the applicant subject to the payment by him of the appellant's costs of the day. The appellant will, therefore, be entitled to the costs of that day but he will pay to the applicant-respondent the costs as taxed of the other proceedings before the Assistant Commissioner.

Appeal partly allowed.

