

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

MA No. 454/2011
IA No. 824/2011

Reserved on:- 05.03.2026
Pronounced on:-25.03.2026
Uploaded on : 25.03.2026

*Whether the operative part or
full judgment is pronounced: Full*

Divisional Manager,
J&K State Forest Corporation
Division, Bhaderwah

.....Appellant(s)

Through: Mr. Vipin Gandotra, Adv.
Mr. Karan Sharma, Adv.

vs

Satish Kumar
S/O Ram Raj
R/O Drafra
Tehsil & District, Doda

..... Respondent(s)

Through: Mr. M. P. Gupta, Adv.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE
JUDGMENT

1. Through the medium of the instant appeal, the appellant has challenged the Award dated 20.07.2011, passed by the Assistant Labour Commissioner, Doda as Commissioner under the Workmen's Compensation Act (hereinafter referred to as the "learned Commissioner"), whereby compensation of Rs. 2,74,500/- was granted in favour of the respondent in a claim for compensation, for his disablement as a workman, during employment of appellant.

2. The brief facts of the present case are that the respondent (hereinafter claimant'), while performing *Pathroo* work in Compartment No. 24, Kellar Sector, A-Nallah Balogri, sustained serious injuries, when a wooden log fell on his left leg; that he was admitted to District Hospital, Doda on 09.01.2007 vide MRD No. 4913 because of a fracture of the left knee bone (patella), which

rendered him permanently disabled; that at the time of the accident, the respondent was 26 years of age and was earning monthly wages of Rs. 6,000/-.

3. The appellant (hereinafter 'Employer') filed written objections before the learned Commissioner, wherein the employment of the respondent and the occurrence of the accident were admitted, however, denied assertions with regard to the age and wages of the respondent; that the learned Commissioner, after considering the contents of the claim petition and the written objections filed by the appellant before it, framed the following issues:

i) *What were the wages and age of the appellant at the time of the accident? OPP*

ii) *What is the extent of disability suffered by the appellant? OPP*

iii) *Relief.*

4. The claimant appeared as his own witness and recorded his statement before the learned Commissioner. He stated that he was working with the appellant in Compartment No. 24, Kellar Jungle, as a Mistry when he met with an accident which caused a fracture to his left leg; that his his monthly wages were Rs. 6,000/-; that due to accident, he remained admitted in District Hospital, Doda for about two and a half months and claimed compensation of Rs. 10,00,000/-.

5. In support of his claim petition, the claimant also examined three witnesses, namely Ram Parshad and Om Parkash, and one medical witness, namely Dr. N. D. Dar. Both Ram Parshad and Om Parkash supported the claim of the respondent on the aspects of the accident. Dr. N. D. Dar, Medical Officer, District Hospital, Doda, examined the claimant in open court on 14.06.2010 and stated that he had been admitted to District Hospital, Doda on 09.01.2007 vide MRD No. 4913, with a history of a wooden log falling on his left knee joint. The claimant was

diagnosed with a fracture of the patella bone of the left knee joint and was treated with plaster of Paris and discharged on 11.01.2007 with advice for regular medical follow-up in the OPD. The doctor further stated that claimant was disabled due to the said injuries and his disablement was more than 55% which too is likely to increase with the advancement of age. The opinion of the doctor was based on clinical examination as well as record shown to him. As per the statement of the doctor, Dr. Shiv Kumar had treated and issued the certificate stating that for the purpose of jungle work, the claimant was 100% disabled. In cross-examination, the doctor clarified that, whatever, he deposed was based on the certificate issued by Dr. Shiv Kumar, Orthopaedic Surgeon.

6. The learned Commissioner, after considering the material on record and hearing learned counsel for the parties, came to the conclusion that the claimant had met with an accident during and in the course of his employment with the employer. On the basis of the medical evidence, the learned Commissioner assessed the permanent disablement suffered by the respondent at 55%. While taking the monthly wages of the respondent as Rs. 4,000/- and his age as 30 years at the time of the accident, the learned Commissioner awarded compensation in the amount of Rs. 2,74,500/- in favour of the respondent.

7. The appellant has challenged the impugned award dated 20.07.2011 passed by the learned Commissioner, precisely on the following grounds:-

- i) That the learned Commissioner has violated the provisions of Sections 4, 5 & 10 of the Workmen's Compensation Act. It is stated that no notice of alleged accident was ever served by the respondent upon the appellant or any of its officers;

- ii) That the learned Commissioner committed illegality while passing the impugned award as it has failed to appreciate the total failure on the part of the respondent to establish his case for grant of compensation;
- iii) That if the respondent received injury while executing the work as alleged by him, the appellant was not liable to pay the compensation to him under the Act as per own showing of the respondent that he was engaged as a labourer by the contractor. Under the circumstances, there was no relationship of workman and employer between the respondent and the appellant, and thus, no liability on the appellant could have been fastened;
- iv) That the award is liable to be set aside on the ground that though Jammu and Kashmir State Forest Corporation was necessary party, yet it was not impleaded as a party in the proceedings before learned Commissioner;
- v) That it was mandatory for the learned Commissioner to first identify the nature of the injury and then assess compensation in accordance with law as mode of assessment of compensation is different for different injuries;
- vi) That the devastating contradictions in the pleading and in the evidence of the respondent have been totally ignored by learned Commissioner, while passing the impugned award;
- vii) That the learned Commissioner has further committed illegality and fatal contradictions in the claim petition and the statement of respondent regarding his age.

8. Learned counsel for the appellant while reiterating the grounds taken in the memo of appeal has, however, restricted his arguments to only two aspects of the matter, one, that the learned Commissioner has assessed the functional disability of the respondent- claimant at its own, whereas the same was required to be assessed by a medical expert, and secondly, that the doctor, who had been examined by the claimant, had not treated him and had just made a statement on the basis of the record available with the claimant and on examination before the

Commissioner, as such, the learned Commissioner, while passing the award, has committed error on the point of law and the appellant has, thus, raised both these substantial questions of law so as to seek quashment of the impugned award. He finally prayed that the appeal be allowed and the impugned award be set aside or be remanded back to the learned Commissioner for deciding the matter afresh. He has relied upon the judgment of this court passed in cases ‘Divisional Manager V. Noor Din & Anr’ reported as 2011 (3) JKJ [HC] and judgment dated 23.07.2018 passed in MA No. 781/2010 titled ‘Divisional Manager, J&K SFC V. Bansi Lal’ to canvass his submissions.

9. Learned counsel for the claimant, *ex adverso*, vehemently supported the award passed by the learned Commissioner, arguing that the learned Commissioner has rightly decided all the material questions arising in the case, on basis of evidence adduced and properly determined the compensation payable to the respondent; that the present appeal is non maintainable for the reason that no substantial questions of law have been raised for determination of this court in the appeal and that whole of the awarded amount has not been deposited, so as to maintain the appeal as provided in proviso to Section 30 of the Employee’s Compensation Act. He further argued that the medical expert the claimant had examined before the learned Commissioner had based his opinion on the record available with claimant with regard to the treatment provided to the claimant by another doctor namely Dr. Shiv Kumar, who was Orthopaedician; that the medical expert had not only shown the physical disability but also expressed his view with regard to the functional disability, which has been accepted by the learned Commissioner, as such, there cannot be any illegality so as to warrant any interference by this court under its appellate jurisdiction. In support of his

contentions, learned counsel for the respondent/claimant has relied upon the law laid down by the Apex Court in case titled ‘Golla Rajanna Etc. Etc. V. The Divisional Manager & Anr’ reported as **2017 ACJ 1**; and in case titled ‘North East Karnataka Road Transport Corporation V. Smt. Sujatha’ reported as **2019 ACJ 29** and of our own High Court in cases titled ‘Shree Ram General Insurance Company Ltd. V. Geeta Sharma & Ors’ reported as **2021 ACJ 1395** and ‘Divisional Manager JKSFC Doda V. Safdar Ali’ in MA No. 582/2014 vide judgment dated 13.09.2023. He, lastly, prayed that there being no substantial questions of law having been raised in the memorandum of appeal, and the entire amount of compensation not having been certified to be deposited with the Commissioner, the appeal, on hand, being non maintainable be dismissed and the impugned award be upheld.

10. Heard learned counsel for the parties, perused the file and considered the matter.

11. Essentially, two questions have been raised in this appeal as argued by the learned counsel for the appellant/employer that the functional disability suffered by the claimant has not been certified by the doctor, as such, the Commissioner was not competent to decide the matter with regard to the permanent disablement of the claimant so as to assess compensation awardable to him and that the treating doctor had not been examined by the claimant and the medical expert, who was simply an MBBS doctor had made statement on examination of the claimant and on basis of the record of his treatment cannot be stated to be an expert witness, so as to ascertain the physical/functional disability suffered by the claimant and to assess the loss of income to award just and fair compensation.

12. The Apex Court in a case titled ‘Fulmati Dhramdev Yadav & Anr. V. New India Assurance Co. Ltd & Anr.’ reported as **2023 INSC 790**, while discussing the appellate jurisdiction in terms of Section 30 of the Employee’s Compensation Act, 1923, held that an appeal from the order of Commissioner can be entertained only if there is a substantial question of law to be considered and that the substantial question of law is to be understood by its general meaning, naturally, the reference is to the Code of Civil Procedure, that framing of substantial question of law is of cardinal importance and existence of such a question is a prerequisite to the appeal being entertained. It was further held that the Commissioner, being the last authority on facts, the scope of appeal under the Act being limited only to substantial questions of law, if some perversity could be demonstrated from the order of the Commissioner.

13. The Apex Court had clearly held in a case reported as **2017 ACJ 1** that a finding on the nature of injury and the percentage of disability suffered by a workman is purely a question of fact and under the scheme of the Workmen’s Compensation Act (now Employee’s Compensation Act), Commissioner is the last authority on facts.

14. It is well established that the Act is a social welfare legislation and therefore, it must be given a beneficial construction. Matters thereunder are to be adjudicated with due process of law and also with a keen awareness of the scope and intent of the Act, as has been held by the Apex Court in ‘K. Sivaraman V. P. Sathishkumar’ reported as **(2020) 4 SCC 594**. A Division Bench of the Hon’ble High Court of Kerala in a case ‘D. Veenu & Ors. V. Senen Fernandes & Ors.’ reported as **1996 ACJ 1078**, while interpreting the Workmen Compensation Act, 1923 in a case of disability of a workman certified as 40% and the employer not

questioning the medical certificate that they accepted before the Commissioner, the acceptance of the same by the Commissioner even without examination of the doctor held proper holding that if the employers wanted to challenge the medical certificate they could have summoned the doctor.

15. The contention of the learned counsel for the appellant/employer that the permanent disablement has to be assessed not by the Commissioner but by the medical expert though the learned Commissioner has not clearly stated in the award with regard to the assessment by the medical expert with regard to disability, however, reverting to the statement of the medical expert Dr. N D Dar, it is found that he had certified that given to the work of the claimant, the claimant had suffered 100% disability and even this medical expert was cross examined by the appellant herein, who stated that he had made his statement on the basis of the certificate issued by Dr. Shiv Kumar, Orthopaedic Surgeon. It appears that the appellant, during the examination of the medical expert, had not raised any objection with regard to his competence to depose as medical expert and subjected him to cross examination also, in such a situation, when the medical expert has been examined and cross examined without any demur from the appellant, his statement cannot be questioned, at the appellate stage, being factual aspect of the case. Even Dr. Shiv Kumar who was stated to be a treating doctor, was not examined by the appellant/employer in its defence, had there been any doubt to the veracity of his certificate on which Dr. N D Dar had made up his opinion on clinical examination of the claimant.

16. A single Bench of this Court in *Safdar Ali (supra)* had also taken a view that the assessment of loss of earning capacity by a medical practitioner cannot be termed to be more than a medical opinion of an expert providing an aid to the

Commissioner, as has been held by the Apex Court in *Golla Rajamma (supra)*, being the last authority on facts. The learned Single Judge in the aforesaid case had also considered the case *Bansi Lal (supra)* relied upon by the appellant/employer, holding that the reliance was misplaced and misdirected in the facts and circumstances of the case and does not lend any support to the case set up by the appellants.

17. Having regard to the case law as laid down by the Apex Court and by this court discussed hereinabove on the subject, it can be safely held, particularly, on the basis of the statement made by the medical expert, that the claimant had though suffered physical disability up to 55% but the same has to be taken as functional disability at 100% being a question of fact determined by the Commissioner, that the examination of the medical expert, who had made statement not only on the basis of the record of treatment available with the claimant and the certificate issued by the treating surgeon/orthopaedic Dr. Shiv Kumar, but also on examination of the claimant before the learned Commissioner, in presence of the learned counsel for the appellant, and affording an opportunity of being cross examined, the appellant cannot take a volte-face and raise this factual question of law before this court under the appellate jurisdiction, which can be exercised only when the substantial questions of law are involved.

18. The Apex Court in a case reported as **2019 ACJ 29** had held that the appeal provided under Section 30 of the Act to the High Court, against the order of Commissioner, is not like a Regular First Appeal, akin to Section 96 of the Code of Civil Procedure, 1908, which can be heard both on facts and law and that the appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.

19. Another aspect with regard to maintainability and the entertainment of the appeal is that the whole of the award amount has to be deposited before entertaining the appeal. As per the certificate of deposit issued by the learned Commissioner, the amount of Rs.2,74,500/- only has been deposited, which has been awarded as principal amount, without any addition of interest thereon till filing of the appeal. A Division Bench of Karnataka High Court in case 'Oriental Insurance Co. Ltd. V. Smt. Sundari & Ors' reported as **2007 ACJ 2139** has held that interest on amount of compensation becomes part and parcel of compensation amount, which the claimants are entitled to under the Workmen's Compensation Act, as such, the Insurance Company was liable to make good not only the principal amount of compensation, but also interest ordered by the Commissioner to be paid by the Insurer.

20. Viewed thus, the principal amount, having been deposited by the appellant without interest, cannot be stated that the award amount has been deposited with the Commissioner, so as to satisfy the prerequisite condition for filing, entertaining and admission of an appeal, besides raising substantial questions of law.

21. Having regard to the foregoing reasons and observations made hereinabove, this court is of the considered opinion that no substantial question of law is found in the appeal, so as to set aside the impugned award and also that the appeal is not maintainable in view of the fact that whole of the awarded amount of compensation payable to the respondent claimant had not been deposited by the appellant at the time of filing of the appeal.

22. As a result, on both these counts, the appeal is found to be bereft of merit and substance and is not maintainable. It is held that the questions, raised by the

appellant, are factual in nature and did not amount to substantial questions of law within the scope of an appeal under Section 30 of the Act. Given the appellate court’s limited jurisdiction to decide substantial questions of law and not to re-appreciate evidence or disturb findings of fact, it is concluded that the factual findings are not open to interference on appeal. Therefore, the instant appeal is dismissed being not maintainable as well as having no substantial question of law. The impugned order is upheld.

23. A copy of this judgment shall be forwarded to the Assistant Labour Commissioner, Doda for information and compliance.

Jammu
25.03.2026
Raj Kumar

