
(2014) 07 OHC CK 0064
In the Orissa High Court
Case No : F.A.O. No. 102 of 2011

Akshya Kumar Samal

APPELLANT

Vs

Manoranjan Padhiari

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 4-A(3), 4-A(3)(a)

Citation : (2014) 4 ACC 392 : (2015) ACJ 1971 : (2014) 2 ILR 594

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghubir Dash, J.—Being aggrieved by the order dated 5.1.2011 passed by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No. 80-D/2006, the applicant before the learned Commissioner has preferred this appeal. Learned Commissioner has allowed the application for compensation and directed the Insurance Company to deposit a sum of Rs. 2,21,693/- towards compensation.

2. Learned Commissioner has accepted the appellant's claim that he was a workman working as helper in the Truck bearing Registration No. OR-09-F-7804 owned by O.P.-Respondent No. 1. On 6.1.2006 the Truck met with an accident in which the appellant sustained injuries which arose out of and in course of his employment. As a result of the accident, the appellant sustained fracture of left femur, neck of the left femur and left patella which ultimately resulted in stiffness of left hip joint as well as left knee joint and he is now unable to sit and squat properly. Learned Tribunal concluded that due to the permanent partial disablement the appellant has lost 75% of earning capacity. About the income of the appellant, the learned Commissioner did not accept the evidence adduced by the appellant claiming that his monthly wages was at the rate of Rs. 3,500/-. On the basis of the minimum wages fixed by the State Government for the year 2006 he determined the monthly wages at Rs. 2,500/-. On the basis as

aforestated the learned Commissioner has worked out the amount of compensation awarded in favour of the appellant. While making the award the learned Commissioner has not awarded interest as contemplated u/s 4-A(3) of the Employees Compensation Act, 1923 (for short, the Act).

3. The Second Appeal is admitted on the following substantial questions of law:

- i) Whether the learned Commissioner has erroneously held the loss of appellant's earning capacity to be to the extent of 75% instead of 100%?
- ii) Whether the learned Commissioner has committed illegality in not awarding interest in favour of the claimant?

4. On the extent of appellant's loss of earning capacity it is submitted by the learned counsel for the appellant that since the appellant was working as a helper in a Truck, he can no more work as a helper in view of the fact that he is unable to move without the help of a pair of crutches for the reason that there is permanent stiffness of his left hip joint as well as left knee joint. In support of this contention he has cited a decision of this Court in Kunei Minz Vs. R.C. Nayak and Another, . Learned counsel for Respondent No. 1 on the other hand submits that the learned Commissioner has rightly determined the appellant's loss of earning capacity at 75% citing the evidence of O.P.W. No. 2 who has assessed the appellant's physical disability at 50%. In the aforesaid Full Bench decision of this Court, the following view taken by the learned Single Judge in Golakha Chandra Bej Vs. Gobinda Hari Passoria and Another, has been accepted with approval:

Moreover physical disability and the loss of the earning capacity are not always the same thing. The doctor has assessed the disability of the claimant at 70%. But his other statements in evidence show that the loss of earning capacity is total and permanent. The Commissioner has committed serious error in comparing between the disability and the loss of earning capacity and in assessing the loss of earning capacity at 70%. It is a case of permanent disability to work as a driver and accordingly loss of earning capacity is 100%.

5. Learned counsel for the Respondent No. 1 cited a decision of the apex Court reported in Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, On a perusal of this reported judgment, nowhere the Hon'ble Apex Court is found to have taken a view contrary to the view taken in Golakha Chandra Bej's case.

In the case at hand, there is no dispute that the appellant was working as helper in a Truck. It is also not in dispute that due to the injuries that he received in course of and arising out of his employment, he has suffered stiffness of left hip joint and left knee joint. A person with such disability, even if the same is assessed at 50%, cannot be employed as a helper in a Truck. On that basis, the loss of his earning capacity should have been assessed at 100%. Learned Commissioner has observed that the argument made by the learned counsel for the appellant in the light of the aforesaid observation was having sufficient force

but he arbitrarily assessed the appellant's loss of earning capacity at 75%. In the result, the first question is answered in favour of the appellant.

Admittedly, learned Commissioner has not awarded interest as contemplated u/s 4-A(3) of the Act. No reason has been cited as to why interest was not awarded. Section 4-A(3) of the Act lays down that where any employer is in default in paying compensation due under the Act within one month from the date it fell due, the Commissioner shall direct that the employer shall pay simple interest on the compensation to the extent it stands as arrear at the rate of 12% per annum or at such higher rate not exceeding the existing maximum of the lending rates of any scheduled bank as may be specified by the Central Government. In *Saberabibi Yakub Bhai Shaikh and others Vs. National Insurance Col. Ltd. and others* (2014(1) T.A.C. 385 (S.C.)), it is observed that the claimants are entitled to interest @ 12% from the date of the accident. In *Ved Prakash Garg Vs. Premi Devi and others*, it is held that when an employee suffers from motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Act along with interest thereon, if any, as imposed by the Commissioner u/s 3 and Section 4-A(3)(a) of the Act will have to be made good by the Insurance Company jointly with the insured employer.

6. In view of the aforecited principle on the claimant's entitlement to interest and the insurer's liability to pay the same, the learned Commissioner has committed illegality in not awarding interest in favour of the appellant as contemplated u/s 4-A(3) of the Act. The appellant is entitled to such interest from the date of the accident. The second issue is, therefore, answered in favour of the appellant.

7. In the result, the appeal is allowed. The impugned order stands modified to the extent that the appellant is entitled to get compensation of Rs. 2,95,590/- (Rupees two lakhs ninety-five thousand five hundred ninety) with interest at the rate of 12% per annum on the said amount of compensation from the date of the accident. The differential amount payable in terms of this judgment be deposited by the Insurance Company with the learned Commissioner within thirty days from the date of this judgment.