

(2017) 02 GUJ CK 0186
In the Gujarat High Court
Case No : 230 of 2011

DHANJIBHAI PITHABHAI MEWADA

APPELLANT

Vs

LAXMANBHAI P SOLANKI

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 30](#), [Section 11](#), [Section 4\(1\)\(d\)](#) -
Appeals - Medical examination - Amount of compensation

Citation : (2017) 02 GUJ CK 0186

Hon'ble Judges : A.G.Uraizee

Bench : Single Bench

Advocate : MR AMAR D MITHANI, GIRISH K PATEL

Judgement

1. The present appeal under section 30 of the Workmen's Compensation Act, 1923, (for short, "the WC Act") is directed against the judgment and order dated 1st May 2010 passed by the Commissioner under the Workmen's Compensation Act, Junagadh in Workmen's Compensation (Non Fatal) Application No.43 of 2004 whereby the application preferred by the appellants came to be dismissed.

2. The brief facts giving rise to the present appeal are as under:

3. The appellant was working as a labourer with the respondent who is engaged in the activity of builder and developer. On 3.1.2004 the appellant suffered injury in an accident while construction work was going on. He preferred Workmen's Compensation (Non Fatal) Application No.43 of 2004 in the Labour Court (Senior Division), Junagadh to claim compensation of Rs.2 lakhs from the respondents for having suffered injuries and resultant disablement during the course of his employment. The Commissioner, by the impugned order dismissed the claim application on the ground that the appellant did not produce the disability certificate to establish on record that he had suffered partial or permanent disability as a result of the injuries suffered by him in the accident. The appellant being aggrieved by and dissatisfied with the impugned judgment and order has

preferred the present appeal, which came to be admitted by this Court on 21.07.2011 for consideration of the following substantial question of law: "Whether in the facts and circumstances of the case, despite the finding recorded by the learned Commissioner with respect to injuries sustained by the claimant and Medical Papers on record, was the Commissioner justified in rejecting the claim application of the claimant?"

4. I have heard Mr Amar Mithani, learned advocate for the appellant and Mr Girish K Patel, learned advocate for the respondent.

5. Mr Mithani, learned advocate for the appellant has vehemently submitted that the medical papers made available on the record indicate that the appellant has suffered temporary disablement as has been deposed by him in his affidavit in lieu of examination-in-chief. He further submits that the oral evidence of the appellant is not assailed by the respondent and therefore, it has gone unchallenged. He further submits that under section 11(1) of the Workmen's Compensation act it was the duty of the respondent to have got the appellant examined by a Medical Practitioner and under subsection (2) of section 11 the Commissioner ought to have got the appellant medically examined. He, therefore, submits that the appeal may be allowed and the compensation in terms of section 4(1)(d) may be awarded to the appellant. In the alternative, he submits that the matter may be remanded to the Commissioner for affording the opportunity to the appellant for adducing medical evidence.

6. Mr Patel, learned advocate for the respondent has supported the impugned judgment and order. He submits that the only a substantial question of law can be considered in an appeal under section 30 of the WC Act. The question which is raised for the consideration in this appeal cannot be considered to be a substantial question of law and the finding of facts recorded by the Commissioner that the appellant has failed to prove that he has suffered permanent or partial disability cannot be examined by this court unless these findings are found to be illegal or perverse. In support of this submission, he has relied upon the decision of the Supreme Court in the case of State of Uttar Pradesh v. Dharmendra Pal Singh (2017) 1 SCC 49.

7. It appears that the appellant was working as a labourer for respondent and on 3.1.2004 he suffered injuries due to fall in the course of his employment. The claim application preferred by the appellant was not contested by the respondent. The Commissioner on appreciation of oral and documentary evidence adduced by the appellant recorded a finding that there was a relation of employee and employer between the appellant and the respondent and the appellant suffered injuries in the course of his employment, but refused to grant compensation on the ground that the appellant has failed to establish that he had suffered permanent or partial disability.

8. Section 4(1)(d) of the WC Act provides for payment of compensation in case of permanent or partial disability suffered by an employee during the course of

his employment. To claim compensation under these provisions the employee has to establish on record that he had suffered either temporary, total or partial disability from the injury. The Commissioner has recorded that the appellant has not produced any medical evidence to establish on record that he had suffered permanent or partial disability. Therefore, this finding of fact recorded by the Tribunal cannot be interfered with in this appeal as only a substantial question of law can be considered in the appeal. The question which is formulated for consideration of this appeal cannot be said to be a question of law and hence, the impugned judgment and order of the Commissioner under Workmen's Compensation Act does not warrant any interference in this appeal.

9. Learned advocate for the appellant has vehemently urged that either the respondent or the Commissioner ought to have referred the appellant for medical examination under section 11 of the W.C. Act. This contention cannot be sustained. Section 11 is an enabling provision either for the employer or the Commissioner to get the employee medically examined but does not cast any obligation on them and therefore, it cannot be urged that since the respondent or the Commissioner failed to get the appellant examined under section 11 of the W.C. Act, the impugned order has become vulnerable and the matter is required to be referred to the Commissioner for fresh consideration.

10. For the foregoing reasons, the appeal fails and is hereby dismissed. The judgment and order dated 1st May 2010 passed by the Commissioner under the Workmen's Compensation Act, Junagadh in Workmen's Compensation (Non Fatal) Application No.43 of 2004 is confirmed. Registry is directed to remit the Record & Proceedings to the court below forthwith.