
(2009) 11 GAU CK 0028
In the Gauhati High Court

Dipak Das alias Dipak Ch. Das

APPELLANT

Vs

Nripesh Chandra Roy and Another

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(1)

Citation : (2010) 2 GLR 452 : (2010) 1 GLT 376

Hon'ble Judges : T. Nand Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nand Kumar Singh, J.—Heard Mr. S. Deb, learned senior Advocate, assisted by Mr. P.K. Pai, learned advocate appearing for the appellant-claimant as well as Mr. P. Goutam, learned Counsel appearing for the respondent No. 2 Oriental Insurance Company Ltd. None appears for the respondent No. 1 Shri Nripesh Chandra Roy.

2. By this appeal under Clause (a) Sub-section (1) of Section 30 of the Workmen's Compensation Act, 1923, the appellant-claimant is assailing the judgment and award dated 8.9.2004 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S.(WC) No. 48 of 2000.

3. Sans unnecessary details, precise facts, leading to the filing of the present appeal is recapitulated.

It is the admitted fact of the parties that the appellant-claimant was engaged as an Assistant-cum-cleaner of the Bus bearing registration No. TR-01-1311, by the respondent No. 1 Shri Nripesh Chandra Roy, , who is admittedly the owner of the said Bus, insured with the respondent No. 2 Oriental Insurance Company Ltd. On 14.6.2000, the said Bus bearing registration No. TR-01-1311 was plying from Khowai to Agartala and the appellant-claimant was discharging his duties as Assistant-cum-cleaner of the said Bus and had comfortably reached at Agartala at about 5.00 p.m. in the afternoon at Motor Stand, where all passengers for

Agartala got down from the said Bus. Thereafter, the appellant-claimant and the driver of the said Bus attended the "Syndicate Office" for the return trip on the following day, i.e., on 15.6.2000 and accordingly, got entry and obtained necessary pass for the return trip. Thereafter, for the purpose of halting the said Bus at night in the Kashipur Garriage, Agartala, the driver and the appellant-claimant while going towards Kashipur, at a place near Kashipur Biscuit Company/Factory on Assam-Agartala Road, at about 6.00 p.m., suddenly the Bus was found disturbing in its wheels (back side) and accordingly, the Bus was parked on the roadside. The driver and the appellant-claimant could notice that the said disturbance was over the left side rear wheel of the Bus and accordingly, with the help of tools and implements, the driver and the appellant-claimant attempted to get the wheels repaired. While the screws of the wheel were loosened, a in from the spring-set sprang out with high speed and directly hit the right eye of the appellant-claimant and as a result of which, he shouted with severe pain. Thereafter, the appellant-claimant was sent for an emergency care to the nearest private clinic of Dr. Gouri Sankar Chakraborty, Eye Specialist and the said doctor after making first aid treatment of the appellant-claimant, advised him to attend the Eye Hospital, i.e., Dr. B.R. Ambedkar Hospital at Hapania, West Tripura.

4. The appellant-claimant attended the said Dr. B.R. Ambedkar Hospital at Hapania on the following day, i.e., on 15.6.2000 in the morning with the help of one escort and the Medical Officers present there checked his eyes and advised for admission in the hospital. Doctors of the said Dr. B.R. Ambedkar Hospital, Dr. Abhijit Roy and some other specialists attended the appellant-claimant and referred him to the "Sankar Netralaya" at Guwahati but, all the efforts of the doctors of "Sankar Netralaya", could not restore the eye-sight of the appellant-claimant's right eye. Thereafter, by a surgical operation, the eye-ball of right eye of the appellant-claimant was removed. Thus, the appellant-claimant become blind and he lost his job as he cannot do his work smoothly due to his nature of job, which requires normal eye sight.

5. The appellant-claimant was getting Rs. 2,500 per month as salary and wages from the respondent No. 1 Nripesh Chandra Roy (owner of the offending Bus bearing Registration No. TR-01-1311) for performing his duties as Assistant-cum-cleaner and with the said income the appellant-claimant used to maintain his family consisting of his old aged parents, younger brother and two sisters. Since the said Vehicular accident, the entire family of the appellant-claimant is facing acute financial hardship. In the application for payment of compensation under the Workmen's Compensation Act, 1923, which was registered as T.S.(WC) No. 48 of 2000, those facts of getting Rs. 2,500 per month as salary and wages from the respondent No. 1 Nripesh Chandra Roy for performing his work as Assistant-cum-cleaner of the offending Bus are categorically pleaded in para No. 5 of the said application. The respondents had also filed their respective written statements, wherein they simply denied that the appellant-claimant was getting Rs. 2,500 per month as his salary and wages from the respondent No. 1 Nripesh Chandra Roy for performing his work as Assistant cum-cleaner of the said

offending Bus.

6. The appellant-claimant, as PW No. 1, in his statement before the court, deposed that the occurrence took place on 14.6.2000 at 5.00 p.m. in front of Kashipur Biscuit Company/Factory while he was discharging his duties as Assistant-cum-cleaner of the offending Bus bearing Registration No. TR-01-1311. The appellant-claimant got down from the Bus and observed that there were defects in the back wheel of the offending Bus. While he was working with the defective wheel, all of a sudden, one small pin sprang out from the defective wheel and hit the right eye of the appellant-claimant and immediately blood started oozing. Thereafter, the appellant-claimant was treated in a private clinic of Dr. Gouri Sankar Chakraborty and on the next day he got himself admitted in the Dr. B.R. Ambedkar Hospital and treated there for about a month as an indoor patient. From that hospital, the appellant-claimant was referred to the Sankar Netralaya, Guwahati and he was there for about 25 days. As the doctors failed to cure the eye-sight of right eye of the appellant-claimant, by an operation, the eye-ball of his right eye had been removed and an artificial eye (stone) had been placed in his right eye, i.e., eye socket. The appellant-claimant also stated that his employer, i.e., the respondent No. 1 Nripesh Chandra Roy used to pay Rs. 2,500 per month besides Rs. 50 per day for his meal. There was no cross-examination of the appellant-claimant (PW No. 1) by the respondent No. 1 (owner of the offending Bus) and also in the cross-examination of the appellant-claimant by the respondent No. 2 Insurance Company, there was no denial from the side of the respondent No. 2 Insurance Company, in respect of the statement of the appellant-claimant that he was getting Rs. 2,500 per month for working as Assistant-cum-cleaner of the offending Bus besides the respondent No. 1 (owner of the offending Bus) used to pay Rs. 50 per day for his meal. Both the respondents are not denying the statement of the appellant-claimant (PW No. 1) that the right eye-ball of the appellant-claimant's right eye had been removed and an artificial eye (stone) had been placed in his right eye socket.

7. PW Nos. 3 and 4, the attending doctors who treated the injury on the right eye of the appellant-claimant, stated categorically that the right eye of the appellant-claimant was injured with iron particles; the appellant-claimant was referred to the RIO, Guwahati on 3rd June, 2000 and was operated on 26th June, 2000 but his vision was not regained. In the course of cross-examination of the said two doctors (PW Nos. 3 and 4), the respondent No. 2 Insurer of the offending Bus did not even deny the statements of the doctors, i.e., PW Nos. 3 and 4 that the appellant-claimant was operated on his right eye on 26th June, 2000 and his vision was not regained.

8. It is clear from the statement of the PWs that the appellant-claimant (PW No. 1) and the said two doctors (PW Nos. 3 and 4) that the appellant-claimant lost his eye sight of his right eye and an artificial eye (stone) had been placed at his right side eye socket and also the respondents are not denying the statement of the appellant-claimant as PW No. 1 that the appellant-claimant was getting Rs.

2,500 per month as his salary for working as Assistant-cum-cleaner of the offending Bus bearing Registration No. TR-01-1311.

9. The learned Commissioner, Workmen's Compensation, West Tripura, Agartala, in his impugned judgment and award dated 8.9.2004 passed in T.S.(WC) No. 48/2000, by relying on the written objection of the respondent No. 1 (owner of the offending Bus), which is not even proved nor supported by the respondent No. 1 by examining himself as a DW, made a finding that the monthly income of the appellant-claimant was Rs. 1,500 without considering the fact that the respondents did not deny the statement of the appellant-claimant in his deposition as PW No. 1 before the Commissioner, Workmen's Compensation, that he was getting Rs. 2,500 per month for serving as Assistant-cum-cleaner of the offending Bus, bearing registration No. TR-01-1311.

10. It is fairly well settled law that in a civil suit and/or proceeding of the civil nature, the plaintiff/applicant cannot be expected to prove his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiffs burden of proof can safely be deemed to have been discharged. In the instant case, the appellant-claimant, no doubt, had succeeded in proving the high degree of probability lending assurance of getting Rs. 2,500 per month as his salary as Assistant-cum-cleaner of the said offending Bus; result being that the onus shall shift to the respondents but the respondents, as stated above, had failed to shift back the onus of the appellant-claimant and, accordingly, it can safely held that the appellant-claimant's burden of proof had been discharged. Ref.: Para 30 of the R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another,

11. The Workmen's Compensation Act, 1923 aims at providing for expeditious reliefs to the victims of accident by the use of motor vehicles. The Act is a beneficial one for the workman and also the third party, the benefits thereof, are available only to the persons under the Act besides under the contract of the insurance, statute, therefore, deserve liberal consideration. The legislative intent contained therein is required to be interpreted with a view to give effect thereto. The Workmen's Compensation Act, 1923 provide for the mode and manner in which the percentage of loss of earning capacity is required to be calculated, the amount of compensation in cases of this nature would be directly relatable to the percentage of physical disabilities suffered by the injured vis-a-vis the injuries specified in Schedule I to the 1923 Act and indisputably where the injuries are specified in Schedule I to the 1923 Act, the mode and manner provided for the purpose of calculating the amount of compensation would be applicable. Entry Nos. 25 and 26 of Part II, Schedule I of the Workmen's Compensation Act, 1923, read as follows:

SCHEDULE I

XXX XXX XXXXXX XXX XXX PART-II

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT.

Serial Description of Injury Percentage Of No. loss of earning capacity

xxx xxx xxx

xxx xxx xxx

[25] Loss of one eye, without 40 complications, the other being normal

[26] Loss of vision of one eye, without 30 complications or disfigurement of eye-ball, the other being normal.

12. In the case in hand, it is clear that the appellant-claimant lost his right eye sight as the eye-ball had been removed and an artificial eye (stone) had been fitted in the right eye socket and his left eye is normal. Entry No. 26 quoted above clearly provide that the percentage of loss of earning capacity will be 30% in the case of loss of one eye without complications or disfigurement of eye-ball, the other being normal. As the right eye-ball of the appellant-claimant had been removed and the other being normal, this case will come under Entry No. 25 and not under Entry No. 26. Therefore, the irreversible conclusion is that the percentage of loss of earning capacity would be 40%.

13. The learned Commissioner, Workmen's Compensation, is required to determine the amount of compensation as laid down under the Act. Even if no amount is claimed, the learned Commissioner must determine the amount, which is applicable to the workman but the learned Commissioner, Workmen's Compensation, West Tripura, Agartala, in the instant case, has utterly failed to determine the right amount which is payable to the present appellant-claimant as laid down under the 1923 Act. Hon"ble Justice R.V. Raveendran in para Nos. 14 and 17 in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, observed that-

14. The lack of uniformity and consistency in awarding compensation has been a matter of grave concern. Every district has one or more Motor Accidents Claims Tribunal(s). If different Tribunals calculate compensation differently on the same facts, the claimant, the litigant, the common man will be confused, perplexed the bewildered. If there is significant divergence among the tribunals in determining the quantum of compensation on similar facts, it will lead to dissatisfaction and distrust in the system.

17. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. While it may not be possible to have mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formula/legal principles

are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation. In General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, this Court stated; (SCC p. 185, para 16)

16. ...The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability, for the assessment of compensation.

14. For the foregoing reasons and discussions, the findings of the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in the impugned judgment and award dated 8.9.2004 passed in T.S.(WC) No. 48 of 2000 that the monthly wages of the appellant-claimant was Rs. 1,500 and the appellant-claimant's percentage of loss of earning capacity as 30%, are required to be interfered with. Accordingly, the above findings are set aside. This Court further held that the monthly wages of the appellant-claimant was Rs. 2,500 (Rupees two thousand five hundred) only and the loss of earning capacity is 40%. Resultantly, the impugned judgment and award dated 8.9.2004 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S.(WC) No. 48 of 2000 is modified to the extent that the amount of compensation should be calculated as follows:

(i) Income Rs. 2,500 (rupees two thousand five hundred) only per month. Therefore, 40% of Rs. 2,500 is Rs. 1,000 (Rupees one thousand) only.

(ii) Factor for 18 years old workman comes to 226.38.

(iii) Therefore, multiplying Rs. 1,000 x 226.38 comes to Rs. 2,26,380 (Rupees Two lakhs twenty-six thousand three hundred eighty) only.

Accordingly, after deducting Rs. 61,122, (Rupees sixty one thousand one hundred twenty-two) only awarded by the learned Commissioner, Workman's Commission, West Tripura, vide judgment and award dated 8.9.2004 passed in T.S.(WC) No. 48 of 2000, the enhanced amount would be Rs. 1,65,258 (Rupees one lakh sixty-five thousand two hundred fifty-eight) only.

15. In the result, the present appellant-claimant is awarded the enhanced amount of Rs. 1,65,258 (Rupees one lakh sixty-five thousand two hundred fifty-eight) only as compensation. The respondent No. 2 Oriental Insurance Company Ltd. is directed to make payment of the aforesaid amount of Rs. 1,65,258 (Rupees One lakh sixty-five thousand two hundred fifty-eight) only as compensation to the appellant-claimant, within a period of 2(two) months from today. If the payment is not made within the time indicated above, the enhanced awarded amount may carry on interest @ 12% per annum from the last day for payment of the enhanced amount.

The appeal is allowed accordingly.