
(1996) 03 OHC CK 0012
In the Orissa High Court
Case No : M.A. No. 260 of 1992

Divisional Manager, National Insurance Co. Ltd.	APPELLANT
Vs	
Pabitra Parida and Another	RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 30A

Citation : (1996) 82 CLT 134 : (1996) 2 LLJ 1204

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : M. Singh and S. Singh, for the Appellant; B.P. Ray and L.M. Nanda for Respondent No. 1 and G.P. Mohanty and H.P. Mohanty, for the Respondent

Judgement

A. Pasayat, J.—National Insurance Company Limited (hereinafter referred to as "the insurer") calls in question legality of award made in favour of Pabitra Parida hereinafter referred to as "the claimant") on adjudication of a claim petition made under the Workmen's Compensation Act, 1923 (in short, "the Act") by the Assistant Labour Commissioner -cum - Commissioner for Workmen's Compensation, Cuttack (hereinafter referred to as the Commissioner). A sum of Rs. 65,541/- was awarded to the claimant for injuries alleged to have been sustained by him on April 20, 1989.

2. The claimant's case as reflected in the claim petition essentially is as follows:

In an accident he sustained injuries in course of and out of employment as driver of the vehicle bearing registration No. O.I.C 2902 belonging to Sital Kumar Mohanty (hereinafter referred to as "the owner"). He has become permanently disabled and unemployed as a result of the injuries sustained. He had to undergo prolonged treatment in the S.C.B Medical College and Hospital Cuttack. He was aged 24 years at the time of accident, and was receiving Rs. 1200/ as monthly wages. It has to be noted here that alleged date of accident was not indicated in the claim petition. The significance of this omission shall be considered by me infra. The Commissioner held that there was loss of earning capacity to the

extent of 60% due to the injuries which resulted in physical disability.

3. The learned counsel for insurer- appellant pointed out several revealing circumstances to highlight about vulnerability of the award. According to him there was no material even to show that any injury has at all been sustained by the claimant, and even if it is accepted that he sustained any injury, the loss of earning capacity or physical disability has no nexus to the same. Learned counsel for the claimant supported the award stating that in the garb of raising substantial questions of law, the insurer has highlighted merely factual aspects which is impermissible with the scope and ambit of section 30 of the Act. The learned counsel for owner submitted that the factual position has not been correctly placed before the Commissioner and the claimant has really no basis to make any claim.

4. On perusal of the records, I find certain disturbing features which seemed to have escaped the notice of Commissioner. There was no written statement filed by the owner, but some body forged his signature and filed written statement purported to have been signed by him. The Vakalatnama filed also was not executed by him. In the written statement which was filed, it was verified as if the owner had accepted the claim of the claimant as regards accident, wages and employment. This is evident from the order sheet. On March 19, 1991 the owner appeared in person. He stated that he had not engaged any Advocate named as Mr. M.R. Panda to plead his case. The claimant was absent on that day. The matter was posted to April 19, 1991 for recording the evidence of the owner. The parties were directed to be informed. Thereafter there was non-appearance by the owner who was set ex parte by order dated July 16, 1991. The insurer filed an application on December 17, 1991 to send the claimant to the District Medical Board to ascertain exact loss of physical disability and loss percentage of disability. The prayer was rejected by the Commissioner on the ground that the Medical Board is appointed by the State Government with a view to determine the condition of health of Government servants, and it is not meant for examination of the claimant under the Act. With reference to Section 4(c)(ii) it was observed that any qualified medical practitioner can assess the percentage of physical disability. He observed that since the two doctors, one ex-Head of Department of Eye Department and the other one Asst. Professor of E.N.T had examined the claimant, he did not think it proper to get the claimant examined by the Medical Board. The loss of earning capacity has been quantified by the Commissioner by holding that the physical disability was to the extent of 25% for the eye defect, 20% for the ear defect and 15% for the loss of front two teeth with facial disfigurement including the injury of his left wrist right hand and head-reeling etc., which in total comes to 60%. It is to be noted here that in the claim petition the claimant had stated that he had sustained serious head injuries causing grievous injuries to his ear, face, eyes and his hands and legs had been fractured as evident from para 2 thereof. On April 21, 1989 he was examined by the A.D.M.O. District Head quarters Hospital, Dhenkanal on Police requisition in connection with F.I.R No. 43 dated April 21, 1989. The following injuries were

noticed.

(i) Lacerated injury Heading 1 1/2" X 1" X 1/2" left side forehead just above the eye brow.

(ii) Cut injury 1" on left side wrist joint.

(iii) Multiple injury on upper lip right side hand.

All the injuries were stated to be simple in nature. From the bed-head ticket issued by Dhenkanal District Headquarters hospital the nature. From the bed-head ticket issued by Dhenkanal District Headquarters hospital the above position is clear.

5. So far as the documents filed by the claimant before the Commissioner are concerned they reveal a shocking tale of manipulations. Exit. 2 is the out-door patient ticket which shows that the claimant complained of defective vision in the left eye because of injury on the forehead on April 19, 1989 in an accident. Great emphasis has been laid by the commissioner on the evidence of Dr. D.N. Acharya examined as p.w. 2 and the certificates issued by him on October 2, 1990 and February 1, 1991. The bed-head inpatient record shows the registration No. 770 dated April 21, 1989. But the date has been manipulated to show April 22, 1989 while in the admission record the date of admission is indicated as April 21, 1989. The date of registration has been changed to April 22, 1989. Similarly there has been a manipulation below the signature of the doctors of backside of page 7. It appears to have been corrected from April 21, 1989 to April 22, 1989. Similarly at page 11 the date April 28, 1989 appears to have been corrected to April 26, 1989. The discharge certificate (Exit. 1) similarly appears to have been manipulated by correction from April 21, 1989 to April 22, 1989. At page 4 of the inpatient record the date and time was indicated to be April 21, 1989 at 9.30 a.m. There has been lot of corrections in number of ward and Unit. The n and in Unit appears to have been scored through to read as III Surgery and 2nd Unit. Interestingly there is outdoor patient ticket showing that the registration No. is 1521 dated April 22, 1989. There is an endorsement that the patient Pabitra Parida was admitted to M.S.W I/II under Dr. A.C Das on April 22, 1989 at 9.25 a.m. The discharge ticket of Surgical Ward of District Headquarters Hospital, Dhenkanal at Page 2 of the bed-head record of S.C.B Medical College and Hospital shows that the claimant Pabitra was admitted on April 21, 1989 and was discharged on April 22, 1989 at 6.40 a.m. Obviously therefore he could not have been admitted on April 21, 1989 as indicated in the Preliminary Admission Form. In Exit. 1 the discharge certificate the registration No. is indicated to be 770 dated April 20, 1989. As indicated above, in the column showing date of admission, the date has been changed to April 22, 1989. I find that claimant's claim is that he was in the hospital till April 30, 1989, and again on the next day, i.e., on May 1, 1989 he went to S.C.B. Medical College and Hospital. But in his evidence claimant has stated that after discharge he gradually developed trouble in eye and ear and was subsequently treated. That

runs clearly contrary to the documents filed. It needs further to be noted that the Commissioner had by his order dated August 21, 1991 directed production of Bed-Head ticket of Surgical Department registration No. 770 of April 20, 1989. Originally the date was written to be April 19, 1989 which has been corrected to be April 20, 1989. Notice issued by the Commissioner (copy at page 55 of the records) shows that direction was for production of bed-head ticket of Surgical Department bearing registration No. 770 dated April 20, 1989. Petition filed by the claimants advocate August 27, 1991 (available at Page 52 of the records) shows that number to be 770 of April 20, 1989. Interestingly in the out-door patient register (Ext. 2), the date of injuries was indicated to be April 19, 1989. The owner was directed to appear before the Commissioner. He appeared before the Commissioner and stated that he had not engaged any lawyer on his behalf. He has also filed an affidavit stating that the accident occurred on the second day of employment of the claimant and stated that no notice was ever served upon him by the Commissioner. There was no indication of any trouble to the ear, nose and throat as is evident from a cursory glance of the medical records. The evidence of Dr. D.M. Acharya does not throw any light as to whether the alleged loss of eye sight as claimed to have been assessed by the Commissioner, was on account of the accident. He examined the claimant after about one and half years of the alleged date of accident. There was no material before the Commissioner to link the accident with the loss if any. The doctor has indicated that there was defective vision with disfigurement. He assessed the physical disability of the eye and the loss of earning capacity at 25%. Interestingly the Commissioner has not referred to the Out-Door Patient Ticket (Ext. 2) wherein it has been indicated that there was defect in vision of the left eye on account of an accident on April 19, 1989. But the claim relates to an accident on April 20, 1989. It is interestingly submitted by the learned counsel for the claimant that in the Out-Door Patient Ticket it has been inadvertently mentioned the date of accident was April 19, 1989 instead of April 20, 1989. It is nobody's case that the accident occurred on April 20, 1989. Claimant has himself indicated case record number to be 770 of April 20, 1989.

So far as the loss of impairment of hearing is concerned, Dr.N.K.Chand (p.w. 3) stated that the claimant came to his residence on October 8, 1990 for impairment of hearing in the left ear. There was no material before him to link the impairment if any with the accident. So far as loss of two teeth is concerned, there is no material to show about the loss of any earning capacity.

6. The Commissioner has relied on Exts. 1, 3, 4, 5 and 6 to hold that the age of the claimant was 26 years at the time of treatment. He has failed to notice in Ext 2 that the age was indicated to be 25 years.

7. All these only lead to an inevitable conclusion that a manipulated claim was made by the claimant. It is too well known that a claim founded on fraud has to be rejected out-right. When there was no definite material before the Commissioner regarding the loss of earning capacity, percentage of physical

disability is not to be treated as the percentage of loss of earning capacity. Dr. D.N. Acharya(p. w. 2) has stated that the amount of disability of eye can be estimated at 25% of loss of earning capacity. He has not given any basis for such assessment. No material whatsoever was produced before the Commissioner relating to impairment of hearing except the certificate issued by Dr.N.K. Chand on examining the claimant on October 8, 1990. He has fairly stated that he had not seen any other prescriptions pertaining to the treatment of ear in between April 30, 1989 and October 8, 1990. He has stated that in the discharge certificate (Ext. 1) there is no mention that he had been treated in the ENT Department. Oblivious of the manipulations making conclusions based merely on surmises than on factual and legal aspects, the Commissioner has made the award, which is clearly indefensible. It could not be pointed out by the learned counsel for the claimant as to under what provision loss of teeth would warrant award for loss of earning capacity.

8. I remit the matter back to the Commissioner for fresh adjudication in accordance with law. He shall give a positive finding about loss of earning capacity, if any, on account of any injury on any part of the body relatable to the accident. So far as the injury in the eye is concerned, the claimant shall be examined by a Board consisting of three eminent Ophthalmologists, namely, Prof. Dr. B.Rajaguru, Retired Director of Medical Education and Training, Orissa; Prof. Dr. In-dramani Sahoo, Professor and Head of Department of Ophthalmology, S.C.B. Medical College and Hospital, Cuttack, and Dr. Brajabin-hari Misra, Eye Specialist, Rotary Eye Hospital, Bidanasi, Cuttack. The Board shall be requested to furnish its views on the following aspects:-

(i) Whether there is any damage to the eye of the claimant resulting in the loss of earning capacity?

(ii) Whether there is any material to link the loss of earning capacity, if any, on account of eye injury caused to the claimant due to the accident, which is claimed to have occurred on April 21, 1989?

(iii) Percentage of loss of earning capacity, if any, caused to the claimant.

The appellant-insurer shall pay requisite fee for examination of the claimant by the Board, which is fixed at Rs. 3,000/- (three thousand). The said amount shall be deposited within a month from today before the Commissioner so that same can be paid equally to the doctors of the Board for examination of the claimant and giving a report on the aforesaid aspects. The Commissioner's determination would depend upon the report of the Board, and the effect of the manipulations highlighted above. The Commissioner shall only consider the evidence of witnesses already examined and record a finding as to whether there was any conceivable link between so called loss of hearing, and the alleged accident. The appeal is disposed of with the aforesaid observations and directions.