

(1999) 02 OHC CK 0017
In the Orissa High Court

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Babuli Perei and Another	RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2000) 1 ACC 209 : (1999) 88 CLT 828

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Judgement

P.K. Misra, J.—The Insurance Company has filed this appeal u/s 30 of the Workmen's Compensation Act against the award of the Workmen's Compensation Commissioner (in short, the "Commissioner") granting compensation to respondent No. 1.

2. Respondent No. 1 was a Coolie engaged in truck bearing registration number O.R.J. 5213 belonging to respondent No. 2. The said truck met with an accident on 30.4.1994. Due to such accident respondent No. 1 sustained several injuries and was hospitalised. Claim application was filed before the Commissioner claiming compensation on the ground that the claimant had sustained injuries in an accident arising out of and in course of employment.

3. The owner in his written statement while admitting the employment and the accidental injury sustained by the claimant disputed other averments including the averments relating to monthly wages, age and gravity of injuries of the applicant. It was claimed that since the vehicle has been insured with the present appellant, compensation, if any, should be paid by the Insurance Company.

4. The Commissioner found that present respondent No. 1 was engaged as a workman in the truck in question of the present respondent No. 2 and had sustained injuries in an accident arising out of and in course of employment. Considering the loss of earning capacity and the monthly wages of the claimant and the age, the Commissioner awarded a sum of Rs. 24,402/- and directed that

the said amount should be paid by the Insurance Company.

5. In this appeal, it is contended by the appellant that the finding to the effect that the present respondent No. 1 was a workman is not sustainable. It is also contended that even assuming that the claimant had sustained -the injuries in an accident arising out of and in course of employment, in the absence of any acceptable evidence on record relating to loss of earning capacity, the award cannot be sustained.

6. It is, therefore, submitted that the appeal may be remanded to the Commissioner for fresh disposal to ascertain the loss of earning capacity, if it is found that respondent No. 1 was, indeed, a workman under respondent No. 2.

7. The finding to the effect that respondent No. 1 was a workman under respondent No. 2 and had sustained the injuries in an accident arising out of and in course of employment, is essentially a finding of fact not available to be challenged in an appeal u/s 30 of the Workmen's Compensation Act. The finding on this aspect is based on discussion of material evidence on record and it cannot be said that the finding is vitiated by any perversity.

8. The second submission of the Counsel for the appellant prima facie has some force, inasmuch as the doctor has not specifically stated about the loss of earning capacity. The learned Counsel for respondent No. 1 has, however, submitted that the accident had taken place in June, 1994 and about five years have elapsed in the meantime. It is submitted that though the opinion of the doctor is not categorical relating to loss of earning capacity, the extent of injuries can be ascertained from the evidence of the doctor as well as from other materials on record. It is, therefore, submitted that instead of remanding the matter to the Commissioner, the appeal should be finally disposed of in this Court in the spirit of Lok Adalat by reducing the compensation amount, if necessary. Remanding the matter to the Commissioner at this stage may be counter-productive for the appellant as the question of payment of interest may crop up. The accident had taken place about five years back. Having regard to the various facts and circumstances of the case and the nature of injuries and period during which respondent No. 1 had to undergo treatment, interest of justice would be served by directing payment of compensation of Rs. 18,000/- to the claimant-respondent No. 1.

9. For the foregoing reasons, the appeal is allowed in part and it is directed that a sum of Rs. 18,000/- shall be paid to claimant-respondent No. 1 within a period of thirty days from the date of this judgment, failing which the amount shall carry interest @ 12% thereafter.