

(1999) 12 OHC CK 0028
In the Orissa High Court
Case No : M.A. No. 126 of 1998

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Guru Charan Nath and Another	RESPONDENT

Date of Decision : 01-12-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2000) 3 LLJ 1464

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The Insurer has filed this appeal against the direction of the Commissioner for Workman's Compensation-cum-Assistant Labour Commissioner, Cuttack (in short, the "Commissioner") in W.C. Case No. 184-J/94 directing payment of Rupees 59,770/- as compensation to respondent No. 1.

2. Respondent No. 1 had filed the claim case for compensation on the allegation that he had sustained bodily injury in an accident arising out of and in course of his employment on January 7, 1994 while he was working as a Helper in truck bearing number CSC 8692 belonging to respondent No. 2. It was claimed that while he was proceeding in the truck in his capacity as Helper from Bangalore to Chandikhole, the left side door of the truck opened suddenly and the claimant fell down sustaining injury. The claimant was treated in the hospital. On the basis of the report submitted by the doctor, G.R. Case No. 8/94 was registered.

3. The owner of the vehicle filed written statement admitting the employment and the accidental injury sustained by the workman. He, however, disputed about the gravity of the injuries and took the plea that, compensation, if any, should be paid by the Insurance Company. The Insurer generally denied the allegations in the claim petition and called upon the claimant to give strict proof of the allegations contained in the claim petition.

4. The Commissioner on the basis of the evidence on record found that the claimant was a workman under respondent No. 2 and had sustained injury in an accident arising out of and in course of employment. Considering the nature of injury and loss of earning capacity, the Commissioner awarded a sum of Rs. 59,770/- and since the vehicle had been insured with the present appellant, directed payment of the compensation by the appellant. Such award is under challenge in the present appeal.

5. In the present appeal, the learned counsel for the appellant has contended that the number of the vehicle had not been indicated in the F.I.R. and from the final form it appears that vehicle bearing number OSC 8292 was Involved in the accident. It is, therefore, contended that the claimant who was claiming to be Helper in respect of truck number OSC 8692 cannot claim compensation in respect of accident involving another vehicle bearing Number OSC 8292.

6. Though such contention may appear to be attractive on the face of it, on deeper scrutiny, the contention cannot be accepted. From the written statement filed by the present appellant it does not appear that such a plea had been raised before the Commissioner. The appellant had merely denied in a general manner the allegations in the claim application, but did not take the specific plea that the vehicle involved in the accident was OSC 8292, nor the specific plea that the claimant had not sustained injury in the accident. Though it is true that in the certified copy of the final form, the vehicle number appears to be OSC 8292, but such a plea was neither taken nor any question was put to the claimant as well as the driver of the vehicle who had been examined in support of the case of the claimant. On the other hand, there is no dispute that Purushottam Nath was the driver of the vehicle, as apparent from the certified copy of the final form. He was examined as PW 2 and stated that the claimant was the Helper in respect of truck number OSC 8692 and the incident related to the truck OSC 8692 . Not a single question was put to such witness suggesting that, in fact, the truck involved was OSC 8692 and not OSC 8692 . In fact, the certified copy of the final form indicates as if the number of the vehicle was OSC 8692 , whereas in the certified copy of the seizurelist, it appears as if the number was OSC 8692 . However, the name of the driver has been indicated both in the final form as well as in the seizure-list to be Purushottam Nath. The Commissioner relying upon the evidence of the claimant as well as of Purushottam Nath has come to the conclusion that the claimant was a workman and had sustained injury in an accident arising out of and in course of employment. It may be that there is some typographical mistake in the final form and the seizurelist. If such a question would have been pointedly raised before the Commissioner, appropriate clarification could have been given either by the claimant or by the driver. Since this question was not raised at all before the Commissioner, the appellant cannot be permitted to raise such a question for the first time in appeal. The finding of the Commissioner being essentially a finding of fact is not available to be challenged in appeal u/s 30 of the Workmen's Compensation Act.

7. The learned counsel for the appellant has faintly raised the question of loss of earning capacity. However, it appears that the finding of the Commissioner on this aspect is based on discussion of the relevant materials on record and no substantial question of law is involved.

8. Having regard to the facts and circumstances of the case, I do not find any merit in this appeal, which is accordingly dismissed.

9. It appears that the amount awarded has been kept in fixed deposit in this Court. The said amount along with accrued interest be disbursed to the claimant by account payee cheque/pay order on or before December 15, 1999. No costs.