

(2008) 10 OHC CK 0068
In the Orissa High Court
Case No : M.A. No. 145 of 2000

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Sri Laxmidhar Parida and another	RESPONDENT

Date of Decision : 31-10-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2008) CLT 157 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Mahetosh Sinha and Associates, for the Appellant; J.K. Mohanty and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This is an appeal u/s 30 of the Workmen's Compensation Act filed by the New India Assurance Company Ltd. assailing the judgment dated 15th October, 1999 passed in W.C. Case No. 2/1999 by Commissioner of Workmen's Compensation and Asst. Labour Commissioner, Balasore. The said case was initiated on the basis of a petition filed by respondent No. 1 stating that he sustained grievous injuries in an accident while working as a Kargeson Machine Operator at M/s. Kasinath Card Board Industry belonging to respondent No. 2. On 13th December, 1998 at about 6.30 P.M. while respondent No. 1 was operating the said machine, his left hand was pushed into the machine and consequently the forefinger of his left hand was severed and thumb was severely injured causing serious bleedings and only because one of the co-workers stopped the machine his life could be saved. He was immediately smitted in Hospital and after prolonged treatment he was discharged on 20th january, 1999. Due to the accident he became disabled and lost 100% of his earning capacity. According to the said respondent he was getting wages of Rs. 2,400/- per month and Rs. 200/- for food and cycle allowance. He was 27 years old at the time of accident. He claimed a compensation of Rs. 2,00,000/-.

2. After receiving notice, the owner of the factory, respondent No. 2, appeared and filed a written statement admitting the fact that the injured respondent No. 1 was his employee and that he sustained grievous injuries in an accident which arose in course of his employment.

The Insurance Company appeared and filed a separate written statement vaguely denying the allegations and put the injured to strict proof of the same.

3. On the basis of the pleadings five issues were framed. In order to substantiate his case the injured got himself examined as P.W.1. The co-worker Who saved his life by stopping the machine was examined as P.W.2. P.W.3 was the treating physician. The owner of the establishment respondent No. 2 was also examined as a witness. The Insurance Company however did not adduce any oral evidence. Though the witnesses were cross-examined by the Insurance Company, nothing could be elicited from them to disprove their statements. The owner of the factory in his deposition apart from admitting the fact that the injured was a skilled labourer engaged by him stated that he was receiving Rs. 80/- per day towards his wages and he was working the whole month except some Sundays. P.W.1, the injured himself, also vividly described the accident. The statement of P.W.1 was fortified by his co-worker, P.W.2 who corroborated the statements. The treating physician, who was examined as O.P.W. No. 3, stated that the injured was about 28 years. He sustained grievous injuries on his left hand fingers. He remained as an indoor patient from 13.12.1998 till 20.1.1999. Thereafter continued as an outdoor patient till 3.3.1999. The doctor had assessed he disability due to loss of all fingers except the thumb to be 40% and loss of his Jaming capability up to 50%. The discharge certificate and the disability certificate were marked as Exts.1 and 5 respectively. Though the doctor was cross-examined at length, nothing was brought out to disbelieve his statement. After discussing the evidence, both oral and documentary, and taking the age of he injured to be 27 years and his wages to be Rs. 80/- per day and relying upon tem No. 7 of Schedule 1 (Part-II) of Workmen's Compensation Act the commissioner assessed the loss of earning capacity to be 50% and awarded a compensation of Rs. 1,28,142/-. Perusing the Insurance Policy, Ext.A, which Clearly revealed that the injured was validly insured with the appellant-insurance Company on the date of accident the Commissioner directed the insurance Company to pay the same.

4. Being aggrieved by the said judgment, the Insurance Company has filed this appeal mainly on the ground that the Commissioner erred in assessing the extent of disability and loss of earning capacity and further erred in calculating the wages of the injured at Rs. 80/- per day. It was further contended that the Commissioner acted illegally in saddling the compensation on the Insurance Company.

5. In course of hearing Mr. Sinha, learned Counsel for the appellant-Insurance Company, forcefully submitted that the policy covered an estimated total earnings of two skilled labourers being Rs. 19,200/-. Thus, the wages of the

injured could never be Rs. 80/- per day and should have been much less. In short, according to Mr. Sinha, the Insurance Company is only liable to pay, compensation, if any, on the basis of terms of the policy and the wages indicated in the policy, the same being an industrial policy. The claim made in the present case mentioning higher wages cannot be entertained. According to Mr. Sinha as the terms of the policy governed the contract between the parties, they are abide by that. In support of such submission, Mr. Sinha relies upon the decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, .

6. The submissions made by Mr. Sinha are repudiated by learned Counsel for the injured-respondent. Relying upon Clause-6 of the conditions of the policy, it is submitted that it is incumbent upon the Insurance Company to verify the accounts of all the wages, salary and on such enquiry if it is found that the wages differs from the amount on which premium has been paid, the difference in premium shall be made by a further proportionate payment to the company or by a refund by the Company as the case may be. For the sake of brevity and better understanding Clause-6 of the Policy is quoted herein below:

The first premium and all renewal premium that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid by the insured to employees during each period of Insurance. The name of every employee together with the amount of wages salary and other earnings shall be properly recorded and the insured shall at all times allow the Company to inspect such records and shall supply the Company with a current account of all such wages salaries and other earnings paid during any period of Insurance within one month from expiry date of such period of Insurance. If the amount so paid shall differ from the amount on which premium has been paid the difference in the premium shall be meet by a further proportionate payment to the Company or by a refund by the Company as the case may be.

7. In the alternative it is argued by learned Counsel for the appellant that there appears to be no ambiguity between the wages of the employee as indicated in the policy and the statement given by the owner. According to the policy there were two skilled labourers and their total estimated earnings was Rs. 19,200/-. It is stated by the learned Counsel for the claimants, that Insurance Company presumed that both the skilled labourers might be drawing the wages which was not correct. In a given case, there may be an apprentice and a very senior skilled labourer with difference of wages earned by them. It is further submitted that the appellant-Insurance Company has not pleaded specifically in the written statement that the wages of the injured was not Rs. 80/- per day though the said fact was clearly mentioned by the owner of the factory in his written statement. It is further submitted that the appellant-Insurance Company, as a matter of fact, had not adduced any evidence to prove that the wage of the injured-respondent No. 1 was less than Rs. 80/- per day. In other words according to learned Counsel for Respondent No. 1, the submissions advanced by Mr. Sinha

are based on only surmises and conjectures and have not been established by any cogent evidence.

8. This Court finds some force in the submissions made by learned Counsel for respondent No. 1. That apart the Supreme Court in the case of United India Insurance Company Ltd. (supra) unambiguously held that the policy shall govern the contract between the parties. Thus the parties will be bound by the terms of the policy. In the case at hand, two skilled employees engaged by the owner had been covered by the Insurance Policy. Their estimated wages had been indicated in the policy. Though in consonance with the terms of the policy the Insurance Company has a right to go and verify the wage register and other documents and if necessary to enhance the premium, the Insurance Company had failed to do so. Thus it is estopped from taking a stand at this belated stage that the wage of the injured was not Rs. 80/- per day. More so because the owner of the factory, respondent No. 2, in his written statement and also in his deposition had clearly stated that the wages of the injured was Rs. 80/- per day.

9. The essence of the Insurance business is coverage of risk by undertaking to indemnify the insured against loss or damages. The insurer agrees to pay the damages arising out of any accident by taking a chance that no accident might happen. Motivation of the Insurance business is that the premium would turn to be the profit of the business in case no damage occurs. Such business of the Insurance Company can be carried on only with the premium paid by the insured persons on the insurance policy. The only profit, if at all the insurance company makes, of the Insurance business is the premium paid when no accident or damage occurs.

10. Considering the facts and circumstances from all the angles, this Court finds that the Commissioner has rightly dealt with the issues raised before it and the conclusions arrived at are just and proper and in consonance with law. That apart an appeal u/s 30 of the Workmen's Compensation Act is maintainable only on questions of law. What was the wages earned by a workman is a pure question of fact and the same cannot be interfered unless of course it is pointed out that the Commissioner has committed any error apparent on the face of the record. This Court, on analysis of facts and submissions advanced and after scrutinizing the evidence, both oral and documentary, is satisfied that the amount awarded as compensation is just, proper and in consonance with the Insurance Policy and the Insurance Company is liable to pay the same.

Accordingly, this Court is not inclined to interfere with the impugned judgment and dismisses the appeal.