
(2002) 12 OHC CK 0013
In the Orissa High Court
Case No : F.A.O. No. 66 of 2002

Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mahendra Ghadei and Another

RESPONDENT

Date of Decision : 06-12-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2003) 95 CLT 197 : (2003) 97 FLR 1001

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

Bench : Single Bench

Advocate : P. Ray, S. Roy, A.A. Khan and A. Ghose, for the Appellant; L. Samantray, B. Beura and B. Samantray for Respondent No. 1 and None, for the Respondent

Final Decision : Partly Allowed

Judgement

A. S. Naidu, J.—The judgment/award passed by the Commissioner for Workmen's Compensation-cum-Asst. Labour Commissioner, Cuttack in W.C. Case No. 625-D of 1999 is sought to be challenged in this appeal filed u/s 30 of the Workmen's Compensation Act by the Divisional Manager, Oriental Insurance Company Ltd. Though the case was listed for admission, with the consent of the learned counsel for the parties, the same is finally heard and disposed of.

2. Mahendra Ghadei, respondent No. 1, a helper employed by one Mamata Pradhan, respondent No. 2, the owner of Mini Truck bearing registration number OR-02-C-5840, filed an application claiming compensation for the injuries sustained by him, in a road accident occurred in course of his employment. The said application was registered as W.C. Case No. 625-D of 1999. According to the claimant, on 27.8.99 at about 1 A.M. when he was proceeding in the aforesaid Mini Truck towards Bhubaneswar, near Iginia Chhak, the said Truck collided with another Truck and as a result of the accident, the cabin of the Mini Truck was completely damaged and the claimant sustained severe fracture of his right leg along with multiple injuries all over the body. As a result of the injuries which

were sustained out of and in course of his employment, he was not only subjected to great pain and hardship, but also was physically disabled thereby losing his earning capacity.

3. The owner of the Mini Truck appeared before the Commissioner and filed her written statement completely admitting the accident, employment of the claimant as well as the injuries suffered by him. The Insurance Company in their written statement baldly denied all the averments made in the claim application. In consonance with the inter se pleadings, the Commissioner framed as many as four issues.

4. To substantiate his case, the claimant examined himself as P.W. 1, the treating physician as P.W. 2 and exhibited several documents including the documents seized by police and the documents relating to the treatment in the hospital.

5. On the basis of the pleadings and the evidence adduced both, oral and documentary, the Commissioner held that the claimant was working as a helper in the Mini Truck and sustained injuries in the accident arose out of and in course of his employment. Basing upon the evidence of the doctor (treating physician) and the medical reports, the Commissioner arrived at a conclusion that the claimant suffered from physical disability to the extent of 60 per cent and lost his earning capacity to the extent of 80 per cent which was permanent in nature. The age of the claimant was found to be 20 years at the time of accident. Basing upon the statement made by the owner/employer who was the master, the Commissioner also held that the claimant was earning Rs. 1600/-per month as wages.

On the basis of the aforesaid finding, the Commissioner allowed the claim application and compensation of Rs. 1,72,032/- was awarded directing the Insurance Company to deposit the said amount within 30 days from that date. The said award, as stated earlier, is impugned before this Court by the Insurance Company, mainly on the ground that there is discrepancy in the registration number of the Truck vis-a-vis the owner of the Truck. It was also disputed that Dr. Ashok Kumar Pani (P.W. 2) was not the treating physician. Relying upon the evidence of the witnesses, the Insurance Company-appellant forcefully submitted that the assessment of the extent of disability as well as the loss of earning capacity by the Commissioner is not correct. But then, the doctor P.W. 1 examined the injured at a much later date. The doctor admitted that he had not examined the injured earlier nor did he treat him. Surprisingly he had also stated that he saw the injured for the first time in the Court room which throws a cloud of suspicion. It is found that P.W. 2 who was the doctor and treating physician; . in his deposition had categorically deposed with regard to the injuries sustained by the claimant. To corroborate such oral evidence, the discharge certificate issued by the Capital Hospital, outdoor ticket and bed-head ticket were filed. The doctor Mr. Pani was an Orthopaedics Specialist. His statements could not be shaken in spite of elaborate cross-examination.

Mr. Roy, learned counsel for the Insurance Company-appellant, forcefully argued the matter and submitted that the amount awarded is on a higher side and in view of the discrepancy in medical evidence, the same should be substantially reduced. At the other hand, Mr. Samantray, learned counsel for the claimant supporting the judgment submitted that the Insurance Company is precluded from challenging the quantum and as no point of law is involved, the appeal is liable to be dismissed in limine.

7. After hearing learned counsel for the parties at length and after perusing the documents both, oral and documentary, I find that the plea advanced by the Insurance Company was not substantiated by adducing any evidence in the Court below. But then, the Insurance Company has examined one doctor who was also the Professor of Orthopaedics, Though there was some discrepancy in his evidence, a doubt arises with regard to the percentage of disability as well as loss of earning capacity of the appellant.

8. Taking a pragmatic view of the entire evidence on record and in view of the fact that the accident occurred as long back as in the year 1999 and that the claimant has undergone a lot of sufferings and physical pain, in a spirit of Lok Adalat, I feel a compensation of Rs. 1,40,000/- would mitigate the pains and sufferings and loss of earning capacity of the claimant-respondent No. 1. Accordingly, I reduce the compensation of Rs. 1,72,032/- awarded by the Commissioner in W. C. Case No. 625-D of 1999 and direct that respondent No. 1 - Mahendra Ghadei shall be paid a compensation of Rs. 1,40,000/-.

it is submitted by the learned counsel for the Insurance Company that the entire amount has been deposited before this Court. In that view of the matter, I direct that out of the amount deposited, a sum of Rs. 1,40,000/- along with proportionate interest accrued thereon be disbursed in favour of respondent No. 1 -Mahendra Ghadei on being properly identified and the balance amount along with the proportionate interest accrued thereon be returned to the Insurance Company by account payee cheque. The entire exercise shall be completed within a period of six weeks hence.

The F.A.O. is allowed in part.