
(1999) 02 OHC CK 0027
In the Orissa High Court
Case No : M.A. No. 417 of 1998

Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Sudersan Giri and Others

RESPONDENT

Date of Decision : 15-02-1999

Acts Referred:

Citation : (2001) 3 LLJ 1078

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

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

P.K. Mishra, J.—The Insurance Company has filed this appeal u/s 30 of the Workmen's Compensation Act (hereinafter referred to as the "Act"), challenging the award dated May 15, 1998 passed by the Asst. Labour Commissioner-cum-Commissioner for Workmen's Compensation (hereinafter referred to as the "Commissioner"), Bhubaneswar, in W.C. case No. 131/96.

2. The claimant-respondent No. 1 was the helper under respondent No. 2 in the truck bearing registration No. OAC-5064. While the truck was being driven for the purpose of the owner, it met with an accident on November 16, 1996, as a result of which the claimant sustained injury including fracture. Claim application was filed before the Commissioner stating that the injury was sustained in an accident arising out of and in course of employment. The owner-respondent No. 2 while admitting about the accident and the employment, took the plea that the liability, if any, should be of the Insurance Company. The Insurance Company denied the allegations made in the claim application. The Commissioner awarded a sum of Rs. 43,273.54 paise on the basis of the evidence of the doctor (P.W. 2), who had stated that the loss of earning capacity was 35%. The said amount was directed to be paid by the insurance as admittedly the truck in question had been insured with the present appellant.

3. In this appeal, it has been contended on behalf of the appellant that P.W. 2 the

doctor, was not a specialist in Orthopaedics and in the absence of any acceptable materials on record, it cannot be said that the loss of earning capacity was 35%. It has been submitted by the counsel for the appellant that the matter should be remanded to the Commissioner for fresh disposal, so that the claimant can be examined by a qualified doctor. The learned counsel for the appellant also suggested that if necessary the claimant can be referred to the Heads of the Department, S.C.B. Medical College Hospital for further examination, so that the loss of earning capacity can be properly assessed.

4. The learned counsel for the respondent submitted that though the doctor who had examined the claimant was not a specialist in orthopaedics, the Act does not contemplate that the doctor must be a specialist. He further submitted that if the matter is remanded at this stage the claimant would be further harassed. It is, therefore, suggested that the matter may be disposed of finally in this Court in the spirit of Lok Adalat by reducing the amount, if necessary.

5. Remanding the matter to the Commissioner at this stage may ultimately prove to be counter productive even for the appellant as the question of payment of interest may crop up. The materials on record indicate that the claimant was hospitalised for quite some time and had sustained fracture in left leg. The claimant has stated that he is getting pain when he bends his leg. Having regard to all these facts, I think it may not be in the interest of justice to raise the matter at this stage. Keeping in view the facts and circumstances, I think interest of justice would be served by directing the Insurance Company for payment of Rs. 32,000 as compensation to the claimant-respondent No. 1.

6. It appears that during the pendency of the appeal the amount awarded by the Commissioner has been kept in a fixed deposit. Out of the said amount a sum of Rs. 32,000 along with the proportionate accrued interest shall be paid to the claimant- respondent No. 1 by way of Account Payee Cheque/pay Order and the balance amount along with the proportionate accrued interest shall be refunded to the appellant.

7. The appeal is accordingly allowed in part. There will be no order as to cost. The learned counsel for the claimant- respondent submitted that the claimant-respondent No. 1 would appear before the Registrar (sic) on February 26, 1999 to receive the amount in question, Office to take steps accordingly.