

(1995) 05 OHC CK 0001
In the Orissa High Court
Case No : M.A. No. 678 of 1994

Divisional Manager, United India Insurance Co. Ltd. APPELLANT
Vs
Purna Chandra Palei and Another RESPONDENT

Date of Decision : 02-05-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4

Citation : (1996) ACJ 640 : (1996) 3 LLJ 1071

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : A.K. Mohanty and S.N. Satpathy, for the Appellant; K. Panigrahi, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—In this appeal u/s 30 of the Workmen's Compensation Act, 1923 (in short, the "Act") legality of the award made by the Commissioner for Workmen's Compensation-cum-Asst. Labour Commissioner, Cuttack (in short, the "Commissioner") is under challenge. The said award was made on adjudication of a claim made by respondent No. 1 Purna Chandra Palei (hereinafter referred to as "claimant") claiming compensation for allegedly having sustained injuries in course of his employment as driver of a truck bearing registration No. 6777 owned by respondent No. 2, Khetra Mohan Pahi at Pahi (hereinafter referred to as "owner"). The assertion made by the claimant in the claim petition was to the effect that on June 27, 1993, while he was checking pressure of a tyre of the vehicle, another truck dashed against it as a result of which he sustained injuries. His age was stated to be 22 years, and salary Rs. 2,000/- per months. He claimed to have been treated at various places including S.C.B. Medical College and Hospital, Cuttack, Dharmasala P.H.C. and Ideal Nursing Home, Buxibazar, Cuttack.

2. The owner filed written statement accepting salary as claimed. A stand was taken that since the vehicle was subject-matter of insurance, United India

Insurance Co. Ltd (hereinafter referred to as "insurer"), the present appellant was liable to indemnify the award made. The insurer took the stand that road permit, fitness certificate, driving licence of driver of the offending vehicle and police records etc. were necessary for adjudication of liability of insured. In order to substantiate his claim, claimant examined the treating physician as p.w.2, The said Doctor assessed percentage of disability and loss of earning capacity at 50%. The Commissioner accepted it and worked out entitlement at Rs. 54,987.50 by accepting the age to be 22 years.

3. The insurer in this appeal has raised two points. Firstly, it is stated that a fake driving licence was produced and therefore insurer has no liability. Secondly, it is submitted that there is no material indicated by the attending physician (p.w.2) to substantiate his statement that percentage of physical disability and loss of earning capacity was 50%. It is also stated that on the admitted position, age of claimant was more than 22 years. A memorandum along with certain documents purported to be documents relating to driving licence were filed, I shall deal with acceptability of these documents infra. Claimant has taken a stand that in an appeal u/s 30 of the Act fresh materials are not to be entertained and, in any event overall view has been taken by the Commissioner which should not be interfered with.

4. It is not disputed by the parties that if the driver of the offending vehicle did not possess a valid driving licence, the insurer would not have any liability. A stand was taken in the written statement filed that the driving licence of the offending vehicle was to be considered by the Commissioner. A petition was filed by the insurer on June 23, 1994 to the effect that driving licence of Puma Chandra Palei has been filed by claimant, which has been marked as exhibit. In the said driving licence, it is mentioned that he cannot work as paid employee, so that insurer is not liable to pay any compensation for injury. The Commissioner passed an order to the effect that question of defect in the driving licence will be considered at the time of judgment. It is crystal clear that stand taken now is entirely different from what was stated before the Commissioner. In the petition dated June 23, 1994 it was stated that the driving licence did not authorise employment as paid employee. Interestingly in the petition dated July 2, 1994, insurer prayed for a month's time to confirm genuineness of the driving licence. Claimant asserted in his cross-examination that he had driving licence and gave a number. There was not even a suggestion that it was not valid or genuine or that it did not authorise him to drive any particular type of vehicle or regarding manner of employment. During argument stand was that there was no driving licence. The Commissioner concluded that the same was seized. Reference was made to seizure list (Ext. IV), F.I.R. (Exts. 1 and 9) and Zimanama (Ext.III/I.). No explanation is offered for the inconsistent stands. The matter was heard on June 23, 1994 and it was directed to be placed on July 2, 1994 for confirmation of policy. The case in fact was taken up on July 4, 1994 and was adjourned to July 11, 1994 for argument. On July 11, 1994 counsel for insurer filed a petition praying for adjournment on the ground that he was

suffering from ailment. The date was posted on July 16, 1994. On that date Advocate for the insurer was absent. The date was adjourned to July 22, 1994 for further argument. On July 16, 1994. counsel for the insurer prayed for time, on the ground that policy belongs to a far off branch and instruction has not been received to admit policy. The date was adjourned to July 27, 1994. On that day, adjournment was again sought for. The Commissioner observed that though adjournment was prayed for, no ground was indicted for seeking adjournment. Prayer for time was accordingly rejected and arguments were heard. Case was adjourned to August 5, 1994 for judgment. On that day, date was adjourned to September 23, 1994 as the judgment was not ready. On September 23, 1994 judgment was delivered. The documents which the insurer wants to be now considered were available with it as is evident from the fact that the concerned documents were received on July 27, 1994 by the insurer. No reason has been indicated as to why these documents were not placed before the Commissioner. The matter appears to have been conducted in the most casual and careless manner by learned counsel appearing for the insurer before the Commissioner. A request was made for examining the claimant by a Doctor at the expenses of the insurer. The Commissioner fixed the date and directed deposit of Rs. 450/- for the purpose. The amount was not deposited. Stand of the insurer in this appeal being that there was no definite material about percentage of physical disability and loss of earning capacity, and therefore opted to get claimant examined by a Doctor. It is surprising that no steps were taken in that regard. Added to that, the manner in which adjournments were sought for left much to be desired. On some occasions no grounds were indicated as to why adjournments were being sought for. In the aforesaid background, I do not find any substance in the prayer to accept documents filed for consideration even without insisting on filing of an appropriate application to accept them as additional evidence.

5. It has been noticed in many cases that because of inept handling of the cases by the counsel appearing for Insurance Companies, proper defences are not taken, necessary evidence and material are not brought on record. No blame can be laid on the Commissioner, because he has acted on the materials placed before him. It is for the Insurance Company who are dealing with public money to properly defend the case and lead necessary evidence so that appropriate awards can be made. In many cases counsel appearing for Insurance Companies do not appear to take their job sincerely. Routine written statements are filed, proper materials are not placed, and they result in inappropriate awards. The case at hand is a classic example of inept handling by learned counsel appearing for insurer before the Commissioner. Some of the applications for adjournment did not contain reason for such prayer. The petition dated January 11, 1993 makes very interesting reading. The petition stated that the Advocate had gone to Delhi, and he himself has signed the petition for adjournment. If at all there was no valid driving licence, materials in that regard, which the insurer claims to be in possession, should have been placed before the Commissioner and in that event liability might not have been fastened on it. No plausible explanation has

been offered as to why that was not done.

6. Coming to the question whether award is proper, there is no definite material brought on record about loss of earning capacity and physical disability. The Doctor (p.w.2) has also not thrown sufficient light on it. Section 4 of the At deals with amount of compensation. In terms of Section 4(1)(c), where permanent or partial disablement results from an injury, and the injury is not specified in Schedule I, the compensation is relatable to loss of earning capacity as assessed by the qualified medical practitioner. Section 2(1)(i) defines a "qualified medical practitioner". It needs no emphasis to hold that loss of earning capacity and percentage of disability are conceptually and intrinsically different. However, the latter generally provides material for determination of (he former. Explanation II to Section 4(1)(c) is also a guiding factor. Since assessment by a qualified medical practitioner has been statutorily prescribed, duty is cast on him to ratiocinate and justify the conclusion. Such assessment cannot be divorced from basis. It cannot be the result of guess work, surmise, conjecture, and cannot be basisless or reasonless. Since statute reposes a responsibility and attaches sanctity to such assessment, it cannot be made arbitrarily. The duty to act with expertise in making the assessment needs no elaboration. At this stage, proper course is to remand the matter to the Commissioner for fresh adjudication. Learned counsel for claimant however, submitted that instead of doing that an overall view may be taken and compensation may be worked out.

7. Considering nature of injury as is evident from the documents on record, I quantify the amount at Rs. 43,990/- by maintaining the age and wages fixed by the Commissioner, and taking loss of earning capacity at 40%. Out of the amount in deposit with the Commissioner, claimant would be entitled to receive a sum of Rs. 43,990/-. Out of that amount, a sum of Rs. 30,000/- be kept in fixed deposit for a period of five years in any Nationalised Bank. No withdrawal shall be permitted before expiry of the period. However, on being moved and being satisfied about any pressing necessity permit withdrawal of such amount as deemed proper. The balance sum of Rs. 13,990/- shall be released to the claimant on being identified by any of the counsel appearing for claimant before the Commissioner. Balance amount deposited before the Commissioner shall be refunded to the insurer.

The appeal is allowed to the extent indicated above.