
(2018) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2033 of 2011

**ICICI Lombard General Insurance Company Limited @APPELLANT@Hash
Surjeet Kumar & Ors.**

Date of Decision : 13-04-2018

Acts Referred:

Workman Compensation Act, 1923 — Section 4(1)(c)(ii), 10, 30

Citation : (2018) 04 RAJ CK 0005

Hon'ble Judges : BANWARI LAL SHARMA, J

Bench : Single Bench

Advocate : Rajaram Choudhary, Vigyan Shah, Rakesh Bhargav

Final Decision : Dismissed

Judgement

Appellant- Insurance Company has preferred this misc. appeal against the impugned judgment dated 28.01.2011 passed by learned Commissioner

Workmen Compensation, Jaipur City in Case No. WCC/NF/4/2009 (Surjeet Kumar vs. Krishan Pal Tyagi And Anr.) whereby learned Commissioner

allowed the application of respondent- claimant- injured for compensation and awarded Rs. 1,55,002/- with interest from the date of accident i.e.

19.12.2008 at the rate of 12% per annum.

The brief facts of the case are that respondent- claimant Surjeet Kumar filed a claim petition for compensation on 07.01.2009 before the learned

Commissioner with the averments that on 19.12.2008 respondent No.- 1- claimant was in employment with respondent No.- 2 as driver on vehicle

No.- HR-67-A-0451. When the aforesaid vehicle was going from Mumbai to Haridwar on 19.12.2008 at 4.30 a.m. on National Highway No.- 8, all of

sudden a Nilgai came in front of the vehicle, when the driver saved the Nilgai, it met with an accident and respondent No.-1-claimant sustained

injuries. At the time of accident, he was 26 years old and was earning Rs. 5000/-

per month alongwith daily allowance of Rs. 100/- per day, he sustained 21% permanent disability due to fracture in right leg, therefore claimed for Rs. 5,16,672/- with interest and penalty. Owner of the vehicle i.e.

employer of the claimant-respondent No.-2 didn't choose to contest the claim petition, he remained absent.

Appellant- Insurance Company filed reply to the claim petition wherein it was averred that claimant was not working under employment of respondent

No. 2- Krishan Pal Tyagi., he in order to get compensation has concocted story by stating that he has sustained serious injuries out of the accident

whereas in the Rojnamacha report, dated 19.12.2008 Police Station Harmada, Jaipur City, Chowki Daulatpura, the claimant himself has stated that he

has sustained only normal injuries in the accident and there is no need of medical examination. During hearing of claim petition, he failed to submit a

single document regarding to injuries. Even the X-ray report was not submitted to show that he has sustained fracture in his right leg. It was further

pleaded that the claimant was not having valid and effective driving license. Further, the vehicle was being used without valid, effective permit and

fitness certificate. It was further pleaded that the appellant-Insurance Company was not given statutory notice under Section 10 of the Workman

Compensation Act, 1923. The permanent disability certificate was issued assessing the disability on very higher side @ 31.81%. The disability

certificate has been issued by the Doctor who has not treated the claimant and therefore he should have obtained the disability certificate from the

Medical Board constituted in Govt. Hospital.

On the basis of pleadings, learned tribunal after framing issues, recording evidence and after hearing the parties allowed the claim petition in the

aforesaid terms.

Mr. Rajaram Choudhary learned counsel appearing on behalf of Mr. Vigyan Shah learned counsel for the appellant submits that respondent- claimant

failed to prove the relation of employer and employee and also failed to produce his driving license. He submits that the learned Commissioner wrongly

assessed the earning capacity of respondent- claimant as 30% without examining the doctor. In absence of statement of doctor the permanent

disablement certificate cannot be relied upon. He submits that appellant filed an application before the concerned RTO for supplying the particulars of

driving license but the same was wrongly rejected by the learned Commissioner, therefore the impugned judgment may be quashed and set aside.

Per contra Mr. Rakesh Bhargav learned counsel appearing on behalf of respondent No.- 2 owner of the vehicle supported the impugned judgment and

submits that respondent- claimant was having valid and effective license and after ensuring the fact of driving license, he gave him employment. He

further submits that after filing disablement certificate, which is a public document there is no requirement to examine the medical Officer who issued

the certificate. He submits that it is not necessary that in each and every case, doctor should be present and examined. He submits that for seeking

copy of documents, appellant- Insurance Company was free to file application before the concerned RTO but he failed to file application before the

RTO, he filed application before the learned Commissioner and learned Commissioner rejected the same and that order was not challenged as such

that order has also attained finality. He submits that the present appeal was filed under Section 30 of the Employees Compensation Act which can be

admitted only in the case when the substantial question of law arises, here, from the arguments advanced by learned counsel for the appellant, the

dispute raised is only regarding the facts, no substantial question of law arises, therefore this misc. appeal should not be admitted and the same shall be

dismissed. I have considered the submissions made at Bar.

Section 30 of the Act provides for appeals to the High Court. To the extent, the provision reads as follow :-

â??30. Appeals.-(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in

full or in part for a lump sum;

[(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half- monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or

disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to

conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than

an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:â??

The Workmenâ??s Compensation Commissioner, having regard to the evidence, had returned a finding on the nature of injury and the percentage of

disability after considering the relation of employee and employer. It is purely a question of fact. There is no case for the insurance company that the

finding is based on no evidence at all or that it is perverse. Under Section 4(1)(c) (ii) of the Act, the percentage of permanent disability needs to be

assessed only by a qualified medical practitioner. There is no case for the respondents that the doctor who issued the disability certificate is not a

qualified medical practitioner, as defined under the Act. Thus, the Workmenâ??s Compensation Commissioner has passed the order based on the

certificate of disability issued by the doctor and which has been duly proved before the Workmenâ??s Compensation Commissioner.

So far as, driving license is concerned. Since, counsel for respondent- owner during course of arguments clearly states that he employed injured-

claimant after satisfying with his driving license that whether he was having driving license or not, the burden was lying on Insurance Company but

Insurance Company failed to submit any evidence in this regard. Further, it is also a question of fact.

In the matter of Golla Rajanna Etc. Etc. vs. The Divisional Manager And Another, Etc. Etc. reported in 2017 (1) SCC 45, Honâ??ble Supreme

Court observed that :-

â??Under the scheme of the Act, the Workmenâ??s Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to

restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial

question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also

there is no basis. The whole exercise made by the High Court is not within the

competence of the High Court under Section 30 of the Act.â??

In the case in hand also the arguments raised by learned counsel for the appellant- Insurance Company relates to facts, which cannot be considered in

this misc. appeal as per Section 30 of the Employees Compensation Act and as per aforesaid Supreme Court pronouncement. Since, no question of

law involves in this misc. Appeal, therefore same is dismissed and the impugned judgment is affirmed.

Record of the Court below be returned with the copy of the judgment.