

(2010) 08 SHI CK 0184
In the High Court Of Himachal Pradesh
Case No : FAO No. 165 of 2009

ICICI LOMBARD General Insurance Company Ltd.	APPELLANT
Vs	
Baldev Singh and Another	RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 30

Citation : (2010) 08 SHI CK 0184

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the appellant/Insurance u/s 30 of the Workmen's Compensation Act, as against the award passed by the learned Commissioner, dated 12.11.2008, vide which the learned Commissioner has awarded the total compensation in favour of the claimant/respondent No. 1 amounting to Rs. 6,19,510/-.

2. Briefly stated, the facts of the case are that claimant/respondent No. 1 filed an application u/s 22 of the Workmen's Compensation Act for grant of compensation. The claimant alleged that he was employed as driver by respondent No. 1 through Vidya Devi to drive the vehicle and he sustained grievous injuries on the backbone and legs. The claimant alleged that he was being paid Rs. 4,500/- per month alongwith Rs. 50/- per day as daily allowance.

3. The petition was contested by the owner Smt. Vidya Devi as well as by the Insurance Company and on conclusion of the case, the learned Commissioner awarded compensation in favour of the claimant payable by the Insurance Company as detailed above.

4. I have heard the learned Counsel for the parties and have gone through the record of the case.

5. The first question raised by the appellant/Insurance Company that though the applicant had admitted in his statement that he was being paid Rs. 2000/- P.M. as salary, therefore, the assessment of his income at Rs. 4000/- P.M. by the learned Commissioner was against the facts.

6. My attention has been drawn to the statement of the claimant as PW-1, in which in his examination-in-chief, he clearly stated that he was getting monthly pay in all amounting to Rs. 4,500/-. In cross-examination, he had stated that he was getting monthly pay of Rs. 2000/-, but he had not used the word in all in his cross-examination. Once the claimant had made the statement that his complete pay was Rs. 4,500/- P.M. and had also admitted in his cross-examination that he was getting Rs. 2000/- P.M., but omitted to add the word in all. A specific suggestion was required to be put to claimant at the time of his examination that his statement that he was getting in all Rs. 4,500/- was incorrect. Therefore, from a perusal of the statement made by the claimant, no inference can be drawn that he has admitted that he was getting monthly pay of Rs. 2000/-.

7. Apart from the above, the owner as RW-1 had admitted that the claimant was getting monthly pay of Rs. 2000/- + 75-80 per day in all. He was getting Rs. 4,500/- per month. In view of the admission made by the respondent/owner and the statement of the claimant as referred to above, the learned Commissioner came to the conclusion that the claimant was earning Rs. 4000/- per month. In case, his income was more than Rs. 4000/-, the petition does not lie u/s 22 of the Workmen's Compensation Act and, therefore, the learned Commissioner has rightly assessed the income at Rs. 4000/- and, therefore, the findings to that extent do not call for an interference by this Court.

8. Coming to the second point raised by the learned Counsel for the appellant, he has submitted that as per the evidence and certificate Ext.PW2/A, disability of the applicant was to the extent of 25%, but the loss of earning capacity was assessed at 100%, which is incorrect and as such, the loss of earning capacity deserves to be reduced to at least 50%.

9. Reliance was placed upon the decision in Swaran Singh v. Achhar Singh and Ors. Latest HLJ 2010 (HP) 482, was relied upon. According to the Medical Officer, disability to the right arm was 85%, but in relation to the entire body, it was found to be 21.25%. In that case, the claimant was working as labourer and it was observed that he cannot work like normal human being. In that case, the loss of earning capacity considered was 50%.

10. Reliance was also placed upon the decision in Kailash v. Jayoti Ram and Ors. Latest HLJ 2010 (HP) 734, in which case, the petitioner was working as conductor. His left leg was amputated as a result of accident and he had suffered 85% permanent disability. The Court had come to the conclusion that the loss of earning capacity should be assessed at 50%. In both the cases referred to above, the claimant was not working as driver. In one of the case, he was working as a conductor and in another case, he was working as an ordinary

labourer and he could have continued with some other work. Keeping in view the facts of those case, the learned Single Judge had awarded compensation assessing the loss of earning capacity at 50%.

11. My attention has also been drawn to the decision of this Court in *The New India Assurance Co. Limited v. Billa alias Daljit Singh and Anr.* Latest HLJ 2009 (HP) 1383, wherein the claimant was working as driver. There was no mention in the evidence in regard to the percentage of disability, but keeping in view the statement of the applicant and the medical evidence that the leg above the knee was amputated, it was held that it can be termed as 100% disability. The loss of earning capacity was assessed at 100% and it was observed that he cannot work as driver and, therefore, the compensation granted by the learned Commissioner was upheld by this Court. It is clear that a driver cannot perform the duties once his spinal code was damaged. A perusal of the impugned judgment shows that the learned Commissioner had come to the conclusion that while making observation under Issue No. 5 that there are injuries in the ankle of the applicant, the applicant has also sustained injuries in the spine and L-1, L-2 vertebrales were found fractured and, therefore, it was held that the applicant cannot do the work of driver as he will not be able to drive the long journey in long duration. It was also held that he cannot do the work of labourer as well as he has fracture in his spine making him unable to earn livelihood. The decision of this Court clearly applies to the present facts and the learned Commissioner while passing the judgment has come to the right conclusion that the loss of earning capacity was to the extent of 100%. No other point was urged during the course of arguments.

12. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which is dismissed alongwith costs including lawyer's fee, which is assessed at Rs. 5000/-, payable to claimant/respondent No. 1.

13. In view of the dismissal of the main appeal, all the miscellaneous applications pending, if any, shall also stand dismissed.