

(2007) 01 GAU CK 0065
In the Gauhati High Court

Narayan Chakraborty

APPELLANT

Vs

Swapan Debnath and Another

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Employees Compensation Act, 1923 — Section 25, 30, 4

Citation : (2009) ACJ 807 : (2007) 1 GLT 735

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard learned Counsel for the parties.

2. This appeal has been directed against the judgment dated 02.02.1999 passed by the learned Commissioner for Workmen's Compensation (for short, "the Commissioner") in Title Suit (W.C.) 24 of 1996 dismissing the claim petition so preferred by the appellant as claimant seeking compensation under the Workmen's Compensation Act, 1923 (for short, "the Act") 4ue to injury suffered by him in an accident in course of his duty as driver while driving the vehicle in question involved in the accident, holding that the appellant was not entitled to get any compensation basically on the sole ground that he failed to examine the doctors who gave the disability certificate as well as the discharge certificates on different dates.

3. Assailing the impugned judgment, the learned Counsel representing the appellant, has strenuously contended that the learned Commissioner has committed a patent error of law in observing that due to non-examination of the doctors concerned who issued the disability certificate wherein percentage of disablement of the claimant-appellant was assessed to 25% and 39% as well as the discharge certificates dated 28.09.95, 04.11.95 and 08.12.95 the claimant was not entitled to any compensation under the Act.

4. Since no substantial question of law as required under proviso to Section 30 of

the Act has not been formulated at the time of admission of this appeal on 18.06.99, the learned Counsel has tried to impress upon this Court today itself in the course of hearing to formulate the substantial question of law on the basis of the submission referred to above as follows:

Whether the learned Commissioner was justified in rejecting the claim petition for non examination of the doctors when the validity of disability certificate as well as the discharge certificates issued by them were not challenged by the respondents including the Insurance Company as well as owner of the vehicle.

5. To substantiate the formulation of the above substantial question of law, the following judicial authorities have been pressed into service:

(i) D. Venu and Ors. v. Senen Fernandes and Ors. reported in 1995 (2) TAC 309 (Ker).

(ii) United India Insurance Co. Ltd. v. Abdul Gafur and Anr. reported in 2004 (Suppl). GLT 118.

6. In D. Venu's case (Supra), the High Court of Kerala in paragraphs-3 and 5 categorically held as follows:

3. Counsel for the appellants relying on a Division Bench Judgment of this Court rendered in Achoor Estate v. V. Nabeesa 1994 (1) LLN 743, contended before us that the Commissioner was in error in accepting Exhibit A-3, Medical Certificate, and awarding compensation without calling upon the respondent to examine the doctor who issued that certificate. The Division Bench, after considering the judgments of the various High Courts, finally came to the conclusion that the loss of earning capacity is to be assessed by the qualified medical practitioner and he should be examined to prove the certificate. If there are special reasons, the Division Bench stated, that the Commissioner can accept other evidence to prove the Medical Certificate and that the probative value of the medical certificate has to be adjudged by the Commissioner taking into consideration the other evidence in the proceedings. We are firmly of the view that the Division Bench did not lay down a law stating that the Medical Certificate can only be proved through the doctor who issued it and that in the absence of such an oral evidence by the doctor the Medical Certificate cannot be accepted. In this connection, we may refer to a judgment of another Division Bench of this Court in United India Insurance Company Ltd. v. Sethu Madhavan 1992 (2) KLT 702. In the said case, the learned Judges considered whether a Medical Certificate can be taken into consideration by the Commissioner without the doctor being examined. The learned Judges also considered whether the provisions of the Evidence Act can be applied to a proceeding before a quasi-judicial Tribunal like the Commissioner for Workmen's Compensation Court. The Division Bench held that the Medical Certificate can be admitted in evidence without examining the doctor and it will be open to the party interested in challenging the Medical Certificate to apply for steps to examine the doctor which the Commissioner will consider. This judgment of the Division Bench in United India Insurance Company Ltd. v. Sethe Madhavan

(vide Supra), was in fact respectfully adopted by the later Division Bench in Achoor Estate v. V. Nabeesa (Supra). The later Division Bench stated in para 10 at page 748:

...However, it goes without saying that the probative value of the Medical Certificate has to be adjudged by the Commissioner taking into consideration the other evidence in the proceedings. We respectfully adopt the reasoning of this Court in United India Insurance Company Ltd. v. Sethu Madhavan (Supra).

5. When we asked Counsel, it was stated that the appellants did not summon the doctor who issued the certificate for the purpose of examining him. They did not take any steps before the Commissioner to show that the certificate issued by the doctor is not a true one. The appellants having not questioned the certificate before the Commissioner cannot at this belated stage contend that the non-examination of the doctor has prejudiced their case. The fact that the appellants did not question Exhibit A-3, the Medical Certificate, can only mean that they have accepted that certificate before the Commissioner. If the appellants really wanted to challenge Exhibit A-3, the Medical Certificate, can only mean that they have accepted that certificate before the Commissioner. If the appellants really wanted to challenge Exhibit A-3, they could have summoned the doctor which they did not do and under the circumstances the Commissioner was right in accepting Exhibit A-3 and granting the respondent an award on the basis of that certificate.

7. The Gauhati High Court in Abdul Gafur's case (Supra) deliberating on the scope of Commissioner's power to determine the compensation on the basis of available medical report in paragraphs 6 and 7 opined that the certificate of disablement issued by the Doctor concerned regarding percentage of loss of earning capacity of the claimant at the rate of 60% was accepted to be valid in the eye of law as the same was duly admitted by the Insurance Company and as such the Commissioner was empowered and had jurisdiction to determine the compensation on the basis of available medical report/disablement certificate.

8. Relying on the ratio of the cases so cited herein above, it is contended on behalf of the appellant that when the Doctors as well as the Medical Board, in the instant case, certified the disability suffered by the claimant to be 25% to 39% and the same was being accepted by the opposite parties without any objection, the evidence of doctors were not at all necessary and therefore, those disability certificate and discharge certificates should have been accepted by the learned Commissioner without the examination of the doctors, being competent to issue such certificates and the claim petition ought to have, accordingly, been allowed.

9. The learned Counsel appearing for the respondents, in support of the impugned judgment, has forcefully contended that the doctors issued the disability certificate without recording any definite specification as regards the disability because in the certificate itself, it was admittedly reflected that the

percentage of disablement was assessed at 25% to 39% and without examination of the doctors concerned such disablement certificate cannot be permitted to be accepted under the law. Moreover, the discharge certificates dated 28.09.95, 04.11.95 and 08.12.95 manifestly did not disclose that the diagnosis made by the doctors at different times were same save and except recording of comminuted compound fracture in the right and left tibia on the right leg therein.

10. Referring to Section 25 of the Act it is contended on behalf of the respondents that the second proviso of the Section 25 specifically provides that evidence of any medical witness shall be taken down as nearly as may be word for word; meaning thereby the evidence of doctor is an essential requirement in making assessment of the disability of an injured person claiming compensation under the Act. He has, in support of his submission, placed strong reliance on a decision of this Court in a case of New India Assurance Co. Ltd. Vs. Sanjit Kumar and Another,

11. Having given my thoughtful consideration to the rival contentions so canvassed on behalf of the parties and also upon meticulous analysis of the materials available on record including the impugned judgment, it is seen that the permanent disability certificate so produced by the claimant/appellant was issued by Special Medical Board for physically handicapped and the said certificate indicates that appellant was examined by the Board on 02.07.97 and found that he was suffering from comminuted compound fracture with infection and some other orthopaedic disabilities and the percentage of disablement was assessed at 25% to 39%. More so, the appellant also filed the discharge certificates of 3 days above mentioned. In all those certificates, it was reflected that the appellant was discharged from the hospital on those days with the injury recorded therein to be comminuted compound fracture in the right and left tibia with multiple injuries. However, those certificates did not disclose that the diagnosis made by the doctors at different times was the same. Nevertheless, those disabilities certificates as well as discharge certificates on different dates mentioned above were admittedly not supported by adducing any evidence.

12. Now the core question remains to be answered is as to whether those disabilities certificate as well as discharge certificates were necessary to be proved by examining all the doctors who issued those documents, by way of medical evidence. In D. Venu's Case (Supra), it is seen that Kerala High Court in dealing with a similar issue opined that medical certificate could be admitted in evidence without examining the doctors who issued it. On the contrary, on the same point, our High Court in Sanjit Kumar's case (Supra) has categorically held, as already noticed herein above, that basic requirement of law under proviso to Section 4(1)(c)(ii) of the Act is that the loss of earning capacity is to be assessed by a qualified medical practitioner and he cannot assess the loss of earning capacity of the injured in his guesswork but the nature of injuries, the percentage of physical disability, the capacity of the injured to perform the

nature of work with specific reference to the type of work he is engaged and the several other such factors are required to be considered by the doctors to arrive at a finding in regard to the loss of earning capacity. Under such circumstances, in the considered opinion of this Court, the doctor's evidence is a necessity and in absence of such evidence of doctors, it is not permissible for the Court to assess the disability factor only on the basis of the certificates issued by the doctors.

13. At this stage, it is felt that it would be necessary and essential to refer to Section 25 of the Act which runs as under:

Method of recording evidence: The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

14. From a close perusal of the second proviso as seen above, it can be easily inferred that the said proviso specifically speaks of taking evidence of any medical witness.

Having regard to the proviso to Section 25 as referred to above as well as on consideration of the ratio laid down in Sanjit Kumar's Case (Supra) this Court is of the firm opinion that the evidence of medical witness is a condition precedent for assessment of the disability of the injured persons so as to enable him to claim the compensation under the Act. Keeping in view the above findings and views expressed by this Court, with all respect, this Court is unable to apply the ratio of D. Vanu's case (Supra) in the instant case.

15. In two recent judicial decisions pertaining to similar issue decided by the Gauhati High Court in cases of New India Assurance Company Ltd. v. Ratan Das and Ors. MFA 18/01 date of disposal 09.08.05 and in Oriental Insurance Company Ltd. v. Dijen Kalita and Ors. FAO No. 15/99 disposed of on 17.08.06, this Court has emphatically held that in absence of doctor's evidence the medical report so submitted by the doctor cannot be accepted.

16. In view of what has been discussed and observed above, this Court is disinclined to dislodge the finding so arrived at by the learned Commissioner in its impugned judgment dated 02.02.99 and accordingly we do find no cogent or plausible reason to persuade ourselves to formulate the substantial question of law above mentioned as suggested. It is, accordingly, held that there is no merit

in this appeal which was filed in the year 1999.

In the result, this appeal fails and stands dismissed.