
(2015) 09 GAU CK 0062
In the Gauhati High Court
Case No : MFA No. 51 and 65 of 2006

National Insurance Co. Ltd. and Others	APPELLANT
Vs	
Narayan Mondal and Others	RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

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

Citation : (2016) 148 FLR 660 : (2015) 4 GLT 844 : (2015) 4 LLJ 571

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : A. Sharma and S. Katakey, for the Appellant

Final Decision : Allowed

Judgement

Nishitendu Chaudhury, J.—In this appeal under Section 30 of the Workmen's Compensation Act, 1923 (now renamed as Employees' Compensation Act, 1923), the insurance company has challenged the judgment and award dated 30.03.2006 passed by the Commissioner, Workmen's Compensation, Dhubri in W.C. Case No. 2/2004. By this judgment and award, the W.C. Commissioner has directed the insurance company to make payment of Rs. 1,77,904/- to the claimant and the owner of the vehicle has been directed to make payment of Rs. 50,703/- towards interest on compensation. While the insurance company has preferred MFA No. 65/2006 challenging the judgment and award dated 30.03.2006 in entirety, the owner, namely, Narayan Chandra Saha has preferred MFA No. 51/2006 against the decision of the W.C. Commissioner directing the owner to make payment of interest component of the impugned judgment and award. Since, both the appeals are directed against two parts of the same judgment and award, both the appeals are taken up together for disposal. One Narayan Mondal filed a claim petition before the W.C. Commissioner at Dhubri leading to registration of W.C. Case No. 2/2004. The claimant stated that he was appointed as conductor in the bus bearing registration No. AS-19-1687 belonging to the opposite party No. 1, Narayan Chandra Saha and that he was paid

monthly salary of Rs. 500/- along with daily allowance of Rs. 70/-. According to the claimant, while the vehicle was moving from Guwahati to Dhubri on 01.02.2003, it met with an accident near Deuduar under Kamalpur Police Station due to mechanical defect. The claimant sustained multiple injuries on his person because of the accident and became permanently and partially disabled. He was taken to Deka Clinic at Baihata for preliminary treatment and thereupon he was shifted to Dhubri for treatment. He was treated by Dr. R.K. Mahato, who referred him to Orthopaedic Surgeon. Thereafter he received treatment at Vivekananda Nursing Home at Patna. According to the claimant, he sustained injuries on left hand, left leg and other parts of the body.

2. Kamalpur Police Station made GD. Entry No. 812 dated 01.02.2003 and GD. Entry No. 386 on 04.02.2003 in connection with the aforesaid incident. On being summoned, the O.P. No. 1 and 2 appeared and submitted written statement. O.P. No. 1 being the owner of the vehicle admitted employment of the claimant under him and stated that he used to pay Rs. 500/- to the claimant per month as salary and Rs. 70/- as daily allowance. The O.P. No. 2, on the other hand, appeared and denied liability of making any payment. Usual objection as to maintainability and bar under Section 10 of the Workmen's Compensation Act apart from quantum of salary and correctness of accident etc. were taken in the written statement of the insurance company.

3. On the basis of the rival contentions of the parties, the W.C. Commissioner framed following 4 (four) issues and asked the parties to lead their respective evidence.

(1) Is there any cause of action for the claim petition?

(2) Whether the claim petition is maintainable in its present form?

(3) Whether the O.Ps are liable to pay compensation as claimed by the claimant petitioner?

(4) If yes, what relief is the claimant petitioner entitled to?

4. Claimant examined himself as P.W. 1 and proved Accident Information Report as Ext. 1, certificate from Deka Clinic as Ext. 2, prescription as Ext. 3, medical certificate from Patna as Ext. 4 and another prescription as Ext. 5. He also adduced Pathological Research Report as Ext. 6 and another prescription from Patna as Ext. 7. The vouchers from Patna were exhibited as Exts. 8 to 19, copy of railway ticket as Ext. 20, copy of tourist contract list of Joy Travels as Ext. 21 and notice under Section 10 served to the opposite parties was exhibited as Ext. 22. Apart from that, three X-ray plates were adduced as material exhibits to prove that there was an accident and that he sustained injuries in such accident.

5. The claimant did not examine any qualified medical practitioner. Under such circumstances, O.P. No. 2, the insurance company submitted an application before the W.C. Commissioner craving leave to take steps for bringing a doctor for examination but the W.C. Commissioner appears to have rejected this

application by an order dated 24.02.2006 and thus, there was no assessment by qualified medical practitioner as required under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923.

6. The W.C. Commissioner after considering the materials available before him passed the impugned judgment and award on 30.03.2006 thereby holding that there was cause of action for the claim petition, that the claim petition was maintainable in the present form and that the opposite parties are liable to pay compensation. The W.C. Commissioner himself made the assessment on the basis of the medical report that the claimant sustained physical disability due to which he lost earning capacity to the extent of 35%. Since, the claimant claimed to be 28 years of age at the time of accident, the compensation was assessed as follows:

$35\% \times \text{Rs. } 2400 \times 211.79 = \text{Rs. } 1,77,904/-$.

Over and above, interest amounting to Rs. 50,703/- has also been imposed on the aforesaid amount. The W.C. Commissioner directed the insurance company to make payment of the principal compensation of Rs. 1,77,904/- and the owner has been directed to make payment of interest to the tune of Rs. 50,703/-. This is how two appeals came to be filed both by the insurance company as well as by the owner of the vehicle.

7. I have heard Mr. A. Sharma, learned counsel for the appellant in MFA No. 65/2006 and Mr. S. Katakey, learned counsel for the appellant in MFA No. 51/2006. None appears for the claimant although name of Mr. M.J. Barman has been shown in the cause list. I have perused the lower court records.

8. At the time of admission of both the appeals no substantial question of law was framed as required under section 30 of the Workmen's Compensation Act, 1923. Under such circumstances, both the learned counsel are heard today to find out as to whether any substantial question of law does arise in the present set of two appeals. After hearing the learned counsel for the parties and on perusal of the records, the following sole substantial question of law is framed in both these appeals:-

"Whether impugned judgment and award is vitiated for non-examination of qualified medical practitioner as required under Section 4(1)(c)(ii) of the Workmen's Compensation Act?"

9. While it is not disputed that claimant was employed by the owner O.P. No. 1 of the W.C. Case and that he had sustained injury owing to the motor vehicular accident and that he used to receive Rs. 500/- as monthly salary and Rs. 70/- as daily allowance, the physical disability and the loss of earning capacity of the claimant is not admitted by either of the opposite parties. Under such circumstances, there is no doubt that the claimant became entitled to compensation under Section 4(1)(c)(ii) or 4(1)(d) of the W.C. Compensation Act, 1923, inasmuch as, none of the injuries referred to in the medical certificate is

mentioned in Part I or II of Schedule I to the Act. Section 4(1)(c)(ii) of the Workmen's Compensation Act requires that in such case the loss of earning capacity is to be assessed on the basis of the opinion of qualified medical practitioner. In the case in hand, the claimant has not examined the person who issued the medical certificate and merely produced the certificate to show that he sustained physical disability and loss of earning capacity. Situated thus, the insurance company submitted an application for examining a qualified medical practitioner for the purpose of assisting the W.C. Commissioner for arriving at a finding in regard to quantum of loss of earning capacity of the claimant but that attempt of the insurance company has been sat at not by the W.C. Commissioner by an order dated 24.02.2006. Under such circumstances, there was no material as required under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 before the jurisdictional W.C. Commissioner to arrive at a finding as to loss of earning capacity of the claimant. The W.C. Commissioner relied on the certificates and made assessment at his own accord which does not appear to be in conformity with the law laid down by the Hon'ble Supreme Court and various High Courts of the country.

10. Mr. A. Sharma, learned counsel for the appellant in MFA No. 65/2006, has placed reliance in the case of Kamla Chaturvedi Vs. National Insurance Co. and Others, , National Insurance Co. Ltd. Vs. Sh. Lalropara & Anr. reported in (2010) 1 GLR 826, Narayan Chakraborty Vs. Swapan Debnath & Anr. reported in 2007 (1) GLT 735 : (2007) 4 GLR 732 and Oriental Insurance Co. Ltd. Vs. Lalliansawmi & Anr. reported in (2010) 2 GLR 399. While Kamla Chaturvedi (supra) has laid down the law in regard to liability of the insurance company to make payment of interest along with compensation amount, the other three judgments relate to law requiring examination of qualified medical practitioner for the purpose of ascertaining the quantum of loss of earning capacity of the claimants. In the case of Narayan Chakraborty (supra), Oriental Insurance Co. Ltd. (supra) and National Insurance Co. Ltd. (supra), this court held that complainant/claimant is duty bound to examine the doctor who issued the certificate. Out of the aforesaid three cases, the case of Narayan Chakraborty (supra) is a claim case under Workmen's Compensation Act, 1923 and this court has held in this case that evidence of a medical witness is a condition precedent for assessment of disability of the insured person for ascertaining the loss of earning capacity. In that case, it was held that W.C. Commissioner is not entitled to assess the disability factor only on the basis of the certificate issued by a doctor unless such doctor has not been examined as witness. This judgment appears to govern the present case. Even in the present case, the claimant did not make any attempt to examine the qualified medical practitioner and merely relied on the medical certificate issued by doctors. On the other hand, insurance company did its part by submitting application before the W.C. Commissioner praying for leave to take steps for calling a qualified medical practitioner so as to assist the court in regard to assessment of loss of earning capacity but unfortunately, the W.C. Commissioner did not allow the application. Under such

circumstances, the impugned judgment and award passed by the W.C. Commissioner does not appear to be in conformity with the provision of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 and as such, the sole substantial question of law is decided in favour of the appellants and against the claimant. The impugned judgment and award, therefore, is hereby set aside and the matter is remanded to the W.C. Commissioner for affording adequate opportunities to the parties to get a qualified medical practitioner examined for the purpose of proving disability, loss of earning capacity and for assessing loss of earning capacity of the claimant. Since it is a case of 2003, the learned W.C. Commissioner shall endeavour to complete the whole process within a period of 6 (six) months from the date of receipt of the records. Send down the records immediately.

11. The insurance company and the owner shall appear before the W.C. Commissioner on 2nd November, 2015 to receive necessary orders and thereupon the W.C. Commissioner shall issue notice to the claimant for appearance. This is because although claimant was represented in these appeals but no one has put up appearance when the matter is called up for hearing. Appeals stand allowed.

12. No order as to costs. At this stage, the learned counsel for the appellant, Mr. A. Sharma, submits that there was an interim order by this court but whole amount was deposited by the insurance company. Under such circumstances, no amount shall be disbursed to the workman, if not already disbursed, till the matter is adjudicated afresh.