

(2019) 05 GAU CK 0074

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 47 Of 2010

National Insurance Co. Ltd

APPELLANT

Vs

Md. Afjal Khan And Anr

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Workmen' S Compensation Act, 1923 — Section 4B

Citation : (2019) 05 GAU CK 0074

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : S Saikia, Abhinay Kr. Gupta

Final Decision : Disposed Off

Judgement

1. Heard Mr. R. Sarma, learned counsel for the appellant. Also heard Mr. A.K. Gupta, learned legal aid counsel appearing for the respondent No. 1/ claimant. None has appeared for the respondent No. 2/ owner of the vehicle despite service of notice.

2. In this appeal, the judgment and award dated 07-01-2008 passed by the learned Commissioner, Workmen's Compensation, Nagaon in NWC Case No. 96/2004 has been put under challenge.

3. This appeal was admitted to be heard on the following two substantial questions of law:

"(a) Whether in view of the Ext.-C communication cancelling the policy issued in favour of the owner of the vehicle, the learned Commissioner, Workmen's Compensation is justified in directing the insurance company to satisfy the award?

(b) In the absence of any findings as regards the extent of permanent disability and the consequential loss of earning capacity, whether the direction to pay compensation under Section 4B of the Act of 1923 would be sustainable in the eye of law?"

4. The respondent No. 1 had suffered grievous injuries in a motor vehicle accident that took place on 09-06-2004 during the course of his employment under respondent No. 2, i.e. the owner of the vehicle bearing No. AS-01K-5497 (TATA Sumo). The respondent No. 1 had demanded payment of compensation on the ground that he had suffered multiple injuries leading to permanent disability and loss of earning capacity. When the demand for payment of compensation was not accepted by the owner of the vehicle, the respondent No. 1, as claimant, had filed the aforesaid claim case wherein the impugned award dated 07-01-2008 has been passed by the learned Commissioner awarding a sum of Rs. 1,49,745/- as compensation.

5. The basic contention of the appellant's counsel in this appeal is that there were cogent materials brought on record to show that the insurance policy document was cancelled on a date prior to the occurrence of the incident and therefore, there was no valid insurance policy on the date of accident. But notwithstanding such clinching evidence available on record, the learned Commissioner had illegally recorded a finding that the insurance policy was valid on the date of accident and has put the liability upon the appellant company to satisfy the award.

6. It is also the contention of Mr. Sarma that although in the impugned award, the learned Commissioner has referred to the testimony of the doctor, yet, there is no independent finding of fact recorded as to the nature and extent of permanent disability suffered by the claimant or the degree of loss of earning capacity suffered by him.

7. Mr. Gupta, learned legal aid counsel appearing for the respondent No. 1, on the other hand, submits that the learned Commissioner had taken note of the doctor's testimony which provides a valid basis to assess the extent of physical disability suffered by the claimant and also the loss of earning capacity suffered by him and the amount of compensation has also been computed on such basis. Therefore, submits Mr. Gupta, it is not a case where there is no finding as regards the extent of permanent disability and loss of earning capacity suffered by the claimant. Mr. Gupta further submits that the validity of the insurance policy is an issue arising between the owner of the vehicle, i.e. respondent No. 2 and the Insurance Company and therefore, the same cannot be a ground to deprive the claimant of the just compensation under the law.

8. I have perused the materials available on record and have also considered the arguments advanced by the learned counsel for both the parties.

9. Insofar as the first question of law is concerned, I find that the learned Commissioner has recorded specific finding of fact that the insurance policy was valid on the date on which the accident took place. However, I also find from the materials available on record that the D.W. had categorically deposed that the insurance policy was cancelled because the cheque issued by the respondent No. 2 for renewal of the policy was dis-honoured. By observing that during his cross-

examination, a contrary stand was taken by the D.W. whereby he had expressed his ignorance about deposit of premium by the opposite party between 18-03-2004 to 09-06-2004, the learned Commissioner had rejected the plea of the appellant/ Insurance Company to the effect that the policy was cancelled before the accident took place.

10. In a decision rendered by the Hon'ble Supreme Court in the case of United India Insurance Company Ltd. Vs. Laxmamma & Ors. reported in (2012) 5 SCC 234 relied by Mr. Sarma, it has been held that if the Insurance Company cancels the policy of insurance and sends intimation thereof to the owner, the Insurance Company's liability to indemnify the third parties which that policy covers, ceases and the Insurance Company is not liable to satisfy awards of compensation in respect thereof. As such, there can hardly be any doubt about the fact that if the insurance policy is cancelled before the date of occurrence of the accident and the matter is informed to the vehicle owner, then the Insurance Company would have no liability to make payment.

11. The burden to prove and establish the fact that the insurance policy was cancelled before the accident took place lies on the Insurance Company and that burden would have to be discharged by leading cogent evidence on record. In the present case, the appellant has produced the notice Exhibit-'C', which goes to show that the policy cover in this case was cancelled due to dis-honour of a cheque and the said fact was also duly intimated by the appellant to the respondent No. 2 by issuing notice dated 18-03-2004. There is nothing on record to show that the insurance policy was subsequently renewed or any fresh policy was obtained by the respondent No. 2 in respect of his aforesaid vehicle. Such being the position, I am of the view that there was no justifiable ground for the learned Commissioner to hold that there was a valid insurance policy covering the claim of the respondent No. 1 and that the Insurance Company would have the liability to bear the amount. The finding of the learned Commissioner to the above extent is, therefore, held to be perverse and hence, unsustainable in the eye of law.

12. Insofar as the extent of permanent disability and loss of earning capacity suffered by the claimant is concerned, there is sufficient medical evidence on record to show that the claimant has suffered permanent disability to the extent of 25% leading to loss of earning capacity to the extent of 30%. The amount of compensation has also been worked out on such basis. As such, it cannot be said that there is absolutely no finding as regards extent of permanent disability and loss of earning capacity suffered by the claimant in this case. Once it is found that the amount of compensation has been awarded by the learned Commissioner by taking the loss of earning capacity to be the same as opined by the medical expert, in the absence of any contrary materials on record, it has to be presumed that the Commissioner was in agreement with the testimony of the medical expert on such count. Since the impugned award is based on proper finding on injury and loss of earning capacity suffered by the claimant and

considering the fact that the appellant has not disputed the occurrence of the accident, I am of the view that without disturbing the impugned award, this appeal can be disposed of by granting leave to the appellant to pay the claimant and recover the amount from the owner of the vehicle, if there is no valid insurance policy covering the claim.

The impugned award dated 07-01-2008 stands modified to the above extent. This appeal stands disposed of accordingly.

Registry to send back the LCR.

The Legal Aid Counsel shall be entitled to remuneration as per the existing rules.