
(2018) 07 GAU CK 0006
In the Gauhati High Court
Case No : MFA 102 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Md. Tayeb Ali, Talib Ali

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Workmen's Compensation Act (Now Employees' Compensation Act), 1923 — Section 4(1)(c)(ii), 30

Citation : (2018) 07 GAU CK 0006

Hon'ble Judges : KALYAN RAI SURANA, J

Bench : Single Bench

Advocate : K Bhatta, K K Das

Final Decision : Allowed

Judgement

(1) Heard Mr. S. S. Sharma, learned Senior Counsel assisted by Mr. B. J. Mukherjee, learned counsel for the appellant. None appears on call for the

respondents although notices has been duly served. Moreover, as per the LCR, it appears that the respondent No.1/ claimant has withdrawn 50% of

the compensation amounting to Rs.58,601/- on 11.09.2007 and, as such, the said respondent No.1 is deemed to be aware of this appeal.

(2) It appears that this Court by order dated 20.03.2018 had directed the Secretary, Gauhati High Court Legal Aid Committee for doing the needful and

the said Committee had appointed the legal aid counsel whose names are reflected in the Cause-list. However, none appears on call for the

respondents No.1 and 2. Hence, the matter has been heard ex-parte against them.Â

(3) It also appears that the appeal was admitted by order dated 08.04.2015. However, no substantial question of law were framed. Therefore, this

Court is inclined to frame the following substantial question of law on which this appeal would be heard:

(1) Whether the assessment of the disability and the loss of earning capacity as certified by the Doctor (PW-2) is sustainable for awarding

compensation in favour of the respondent No.1?

(2) In view of the nature of evidence tendered by the PW-1, whether the learned Commissioner was justified in holding the respondent No.1 to have suffered from permanent partial disability?

(4) By this appeal under section 30 of the Workmen's Compensation Act (now Employees' Compensation Act), 1923, the appellant has

challenged the judgment dated 18.04.2006, passed by the learned Commissioner, Workmen's Compensation, Kamrup, Guwahati in WC Case

No.179/2002, thereby awarding the total compensation of Rs.1,17,202/- to the respondent No.1.

(5) As per the claim petition, the case of the respondent No.1 is that he was working as a driver in a truck bearing registration No.AS-25-1438, owned

by the respondent No.2. On 23.03.2002 at about 1:20 p.m., the vehicle met with an accident at Karertal as a result of which the respondent No.1

sustained injury. He was having a valid driving license at the time of the accident. He claims that he was earning monthly wage, inclusive of

allowances, amounting to Rs.4,200/- and he had prayed for compensation of Rs.4,99, 152/(Rupees Four lakh ninety nine thousand one hundred and

fifty two only) with interest thereon.

(6) The appellant herein was arrayed as opposite party No.2 in the claim petition. The appellant had contested the claim petition by filing in their written

statement and usual pleas was taken, denying the liability. The respondent No.2, who was the opposite party No.1 in the claim petition, by filing the

written statement, accepted the employment and the wages of the respondent No.1 and also produced the copies of the registration certificate,

permits, insurance paper, etc.

(7) In support of the claim, the respondent No.1 examined himself as PW-1 and he also examined the Doctor as PW-2 and he had exhibited the

following documents: -

(1) Doctor prescriptions- Ext.1,

(2) Medical Certificate- Ext.2,

(3) Series of Medical Vouchers-Ext.3

(4) Driving license (proof in original)- Ext.4

(5) Photocopy of the police report (proof in original)- Ext.5

(8) The learned Commissioner, by relying on the evidence of the Doctor (PW-2) and by accepting the age of the respondent No.1 as 30 years, held

that the monthly salary of the respondent No.1 was Rs.2700/-, further holding that the respondent No.1 had sustained injuries in the vehicular accident.

The compensation was calculated by accepting the physical disability at 40% and loss of earning capacity at 35% and assessed the compensation as

follows:-

60% of Rs.2700/- X 207.98 X 35% = Rs.1,17,202/- (Rupees One lakh seventeen thousand two hundred and two only).

(9) The respondent No.2 was held liable to pay compensation to the respondent No.1 and as the vehicle of respondent No.2 was insured with the

appellant, the appellant was directed to pay the compensation on behalf of the respondent No.2 along with 9% interest per annum from the date of the

order till deposit.

(10) By referring to the cross-examination of PW-1 the learned Senior counsel for the appellant has pointed out that the respondent No.1 had

categorically admitted in his cross-examination that- "I am driving the vehicle and employed as usual. I will surrender the D/L if I am given the full

compensation". The said witness had also deposed that "I visited the Doctor 3/4 days after the accident. I got cured after taking the above

treatment and went to the owner seeking further employment."

(11) The learned Senior counsel for the appellant has made pointed submissions to assail the impugned judgment.

(12) By further referring to the cross-examination of the Doctor (PW-2), the learned Senior counsel for the appellant has referred to the admissions

made by the Doctor (PW-2) that he had only attended the injured on 23.03.2002 and thereafter he did not examine the said patient and the Doctor

categorically stated that as revealed by records, he had not examined the respondent No.1 on the date of issuance of certificate. The Doctor further

admitted that he had not written anything on the certificate (Ext.2) regarding the

nature of disablement, further deposing that from simple external painful swelling, it is not possible to assess physical disability and nature of injury in all case. The said PW-2 had also stated that no X-ray was advised to be done on the injuries. Accordingly, it is submitted that the Doctor, had not done the X-ray on the injured person, the finding as regards the 3 injuries are not sustainable, being:

Injury No.1: A contusion on right patellar region with restricted movement on right-knee joint clinical examination clearly reveals dislocation of right patella.

Injury No.2: A contusion of right frontal region of scalp.

Injury No.3: A contusion on right elbow-joint.

(13) In view of the said evidence, the learned Senior counsel for the appellant has submitted that the claim petition was not at all sustainable because of the fact that the respondent No.1 was doing his normal duties as the driver of the truck.

(14) By further referring to the injuries certificate (Ext.2), it is submitted that the accident took place on 23.03.2002, but the Doctor (PW-2) had issued the certificate on 20.04.2002, without examining the respondent No.1. Therefore he prays for allowing the appeal.

(15) Having perused the LCR, it is seen that the learned Senior counsel is correct when he has referred to the cross-examination of PW-1 and PW-2, the relevant part of which is narrated above.

(16) It is seen that on the date of the accident when the doctor (PW-2) has seen the respondent No.1, the said injured had suffered a contusion on the right patellar region with restricted movement on right knee joint, which, according to the Doctor (PW-2), indicated dislocation of right patella. Thus, without giving any time for healing, on the basis of examination of injured on the date of the accident, the assessment of permanent disability was certified by the Doctor only on the basis of clinical examination and in the absence of any X-ray. In the opinion of this Court, every category of medical condition has a prescribed time for such medical condition to heal. If without allowing the prescribed time to lapse for healing, if someone certifies permanent partial disability, it signifies that the doctor is certain that his treatment was not intended for healing. On a perusal of the medical

prescription on record, it is observed that the clinical condition of the respondent No.1 was only recorded therein and the respondent No.1 was prescribed only an antibiotic, an anti-inflammatory drug as well as an injection. The prescription (Ext.1) shows no application of any plaster or a bandage to secure the dislocated area. As per the admission of the PW-1, he had visited the Doctor only after 3/4 days of the accident and he had got cured. Thereafter, the respondent No.1 had also gone to the respondent No.2, seeking re-employment. He has also admitted the renewal of driving licence after the accident who was driving vehicle.

(17) Under the circumstances, this Court does not find any evidence of any permanent partial disability suffered by the respondent No.1 as he has categorically stated that he was driving the vehicle and was employed as usual. The respondent No.1 had also stated that he will surrender the D/L only if he is given the full compensation, which is the admission of the fact that he is employed as the driver. It is seen that the evidence of Doctor does not inspire any confidence because he had admitted that he has issued the certificate without examining the respondent No.1. Although, this Court does not doubt the ability of the Doctor to recollect the nature of injuries suffered by a person about a month back, but it is highly unusual for a Doctor in a Civil Hospital to issue a certificate without examining the patient on the date when he has issued a certificate. The certificate (Ext.2) was issued in a casual and cavalier manner without examining the injured. It is highly improbable that the person like respondent No.1 who is claiming permanent disability and is a driver by profession would choose not to visit a doctor to get his physical condition assessed if he is unwell, unless the doctor (PW-2) has a reputation of issuing certificate without examining a patient. Therefore, the issuance of certificate without examining a patient cannot be accepted as a correct assessment of the Doctor about the physical condition of the respondent No.1 on the date on which he had issued the certificate. Therefore, the entries in the said certificate does not inspire any confidence of the Court because the doctor (PW-2) did not examine the said respondent No.1 while issuing his certificate and therefore, the assessment of disability and the loss of earning capacity as assessed by the certificate dated 20.04.2002 for injuries which were suffered on 23.03.2002 is not admissible because on 20.04.2002 the respondent No.1 was not

examined while issuing the said certificate.

(18) In view of the above, the finding of the learned Commissioner is not found to be sustainable. Moreover, it would be relevant to mention that while

the learned Commissioner had mentioned that the opinion of the Doctor on injury No.1 for the assessment of physical disability at 40% and loss of

earning capacity at 35%, but there is no finding recorded by the learned Commissioner, accepting the said assessment to be the correct assessment of

the injuries sustained by the respondent No.1. Moreover, no finding is recorded that the learned Commissioner was satisfied that the respondent No.1

had suffered permanent partial disability within the meaning of section 4(1)(c)(ii) of the Workmen's Compensation Act. Thus, without arriving at

the said finding, the computation of the assessment is not sustainable. Therefore, both the substantial question of law as formulated above is answered

in the negative and in favour of the appellant by holding that the assessment of the disability and the loss of earning capacity as certified by the Doctor

(PW-2) is not sustainable for awarding compensation in favour of the respondent No.1 and the learned Commissioner was not justified in holding that

the respondent No.1 had suffered permanent partial disability.

(19) There is no evidence tendered that for how many days the respondent No.1 had suffered temporary partial disablement. Therefore, the impugned

judgment dated 18.04.2006 passed by the learned Commissioner, Workmen's Compensation Kamrup in WC Case No.179/2002, is not found to be

sustained either in facts or in law. This Court does not find that the injuries sustained by the respondent No.1 would have resulted in any permanent

partial disablement. Therefore, the impugned judgment dated 18.04.2006, passed by the learned Commissioner, Workmen's Compensation,

Kamrup, Guwahati in WC Case No.179/2002, is set aside.

(20) As the respondent No.1 is not found entitled to any compensation, liberty is granted to the appellant to initiate proceeding against the respondent

No.1, if so advised for recovery of the compensation withdrawn by the said respondent. As this appeal has been allowed, the appellant would be

entitled to recover the balance 50% of the awarded sum lying in the office of the Commissioner, Workmen's Compensation, Guwahati, by

producing a certified copy of this order.

(21) Send back the LCR.