

(2009) 09 DEL CK 0139
In the Delhi High Court
Case No : FAO No. 360 of 2004

National Insurance Co. Ltd.

APPELLANT

Vs

Ranbir Sharma (since deceased replaced by his Widow and Minor daughter, Smt. Kajol and Miss Mamta, Minor daughter through her mother, natural guardian, Smt. Kajol) and Raj Kumar Khanna

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0139

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : S.L. Gupta, for the Appellant; Pratima Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—National Insurance Company-appellant, has filed this appeal challenging order dated 27th September, 2004 passed by Commissioner under Workmen Compensation Act, 1923 (for short as "Act").

2. Brief facts are that, Ranbir Sharma (deceased) was employed as driver of respondent No. 2 on his vehicle bearing registration No. HR-38-G-5936 (Truck). On 19.9.2003, he received injuries in an accident arising out of and in the course of employment. He was removed to Heritage Hospital, Varansi, from where he was discharged on 22.9.2003.

3. Thereafter, he got admitted in Pernami Hospital, Shalimar Bagh, Delhi and was operated upon and was discharged on 23.10.2003. After accident, he became 100% disabled and his earning capacity had been totally reduced. Accordingly, he filed claim petition.

4. Respondent No. 2 in reply to claim petition admitted that, Ranbir Sharma (deceased), was employed as a driver on his vehicle and on 19.9.2003, he received personal injury in an accident, arising out of and in the course of

employment.

5. Appellant on the other hand, raised some preliminary objections that, no claim form has been filed by insured regarding accident or injuries suffered by claimant, therefore, liability of appellant to pay compensation or interest does not arise. But factum of insurance of vehicle was not denied.

6. Vide impugned order, Commissioner awarded a compensation of Rs. 3,98,485.98 to the claimant-Ranbir Sharma.

7. Being aggrieved with the impugned order, appellant has filed this appeal.

8. During pendency of the appeal, Ranbir Sharma died and his legal heirs were brought on record.

9. It is contended by learned Counsel for appellant that, impugned judgment is contrary to law since Commissioner has wrongly taken the disability as 100%, without any proof of medical certificate issued by competent authority.

10. Secondly, appellant is not liable to pay interest and penalty. The liability to pay the same, is of employer/owner of vehicle, under the Act.

11. On the other hand, learned Counsel for respondents No. 1, contended that Commissioner under the Act, is a quasi judicial authority and is not strictly bound by the rules of evidence. In support learned Counsel for respondents, cited decision of Supreme Court reported as State of Mysore Vs. S.S. Makapur,

12. It is also contended that disability certificate has been duly proved on record, as Commissioner had written letter to Chief Medical Officer, Sonapat, who examined the deceased, qua his disability. There is, thus, no ambiguity in the impugned judgment.

13. In S.S. Makapur (Supra), Court observed;

The sole point for determination in this appeal therefore is whether the procedure adopted by the Deputy Superintendent of Police in admitting the statements of witnesses examined before Mr. Majumdar in evidence is opposed to the rules of natural justice. The question is one of importance, because as appears from the cases which have come before us the procedure followed by the Deputy Superintendent of Police in this case is the one followed by many tribunals exercising quasi judicial powers. For a correct appreciation of the position, it is necessary to repeat what has often said that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What

is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

14. Claimant in his evidence by affidavit Ex.AW1/A, stated that due to this accident, he has been disabled and is not in a position to stand and is confined to bed. He further stated that he has become 100% disabled for the purpose of his employment as driver and his earning capacity has been totally reduced.

15. There is no rebuttal to this statement of the claimant.

16. Commissioner vide letter dated 12th February, 2004, wrote to Medical Superintendent, Sonapat, that disability certificate in respect of injuries received by the claimant is required by the court for computing the amount of compensation. Therefore, he requested the doctor to examine the claimant and also asked for a report in respect of injuries and to issue the disability certificate.

17. Since Commissioner is a quasi judicial authority, as per principles of law laid down in S.S. Makapur (Supra), he was within his right to ask for Disability Certificate from Medical Board of General Hospital, Sonapat. Consequently, Disability Certificate Ex.AW1/AB, was issued by Medical Board of General Hospital, Sonapat. As per this Certificate, claimant was having 100% disability. In view of this convincing evidence, Commissioner rightly awarded compensation to claimant for 100% disability.

18. Regarding contention of learned Counsel for appellant to pay interest and penalty, the Commissioner only ordered for issuance of show cause notice, on the issue of interest and penalty. There is nothing on record to show, as to whether any interest or penalty was ever imposed upon the appellant. So, this issue is of no consequence.

19. Hence, there is no ambiguity in the impugned order. The appeal stands dismissed.

20. Amount lying deposited, if any, in this Court be paid to the claimants, after the expiry of period of limitation of appeal.

21. Parties shall bear their own costs.

22. Record of Commissioner's Court be sent back.