
(2007) 06 OHC CK 0012
In the Orissa High Court
Case No : F.A.O. No. 409 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Sakti Behera and Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2007) 1 OLR 1023 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.K. Padhi and G. Mishra, for the Appellant; A.K. Choudhury, K.K. Das, P.K. Pradhan and C.R. Behera for Respondent No. 1, B. Sahoo and Md. Fayaz, for the Respondent

Judgement

A.S. Naidu, J.—The judgment dated 29.8.2006 passed by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack in W.C. Case No. 33-D/05 is assailed by the Appellant-National Insurance Company Ltd., u/s 30 of the Workmen's Compensation Act.

2. Sakti Behera, the applicant-Respondent No. 1 was employed as a driver in a truck bearing registration No. ORY-5997 belonging to opposite party No. 2. On 28.10.2004 while proceeding in the said truck it developed some mechanical trouble and he parked the truck on the roadside. At that juncture of time Anr. vehicle coming from opposite direction dashed against the applicant-Respondent No. 1 thereby causing grievous injuries all over his body and including the fracture injuries on both of his hands. He was immediately shifted to Dangadi P.H.C. Due to serious condition of his health he was referred to S.C.B. Medical College and Hospital, Cuttack. In spite of best and prolonged treatment it was alleged he was not cured and became disabled. According to the said applicant-Respondent he was 28 years on the date of accident and was earning Rs. 4,000/- per month as a truck driver excluding food allowance. He filed the aforesaid W.C Case claiming compensation to a tune of Rs. 5,50,000/-.

3. The owner of the offending vehicle appeared and filed written statement admitting the employment of injured Respondent, the wages paid to him, the accident in course of service, but then disputed the gravity of the injuries and the age of the applicant. He also disowned his liability to pay any compensation on the ground that the offending vehicle was duly insured with the Appellant-Insurance Company and the insurance policy was valid on the date of accident.

The Appellant-Insurance Company in its written statement vaguely denied all the averments of the applicant-Respondent and called upon him to strict proof thereof.

4. To substantiate his case the applicant filed certified copy of the F.I.R. charge sheet, injury report, three Zimanamas, discharge certificate of the S.C.B. Medical College and Hospital and bead head tickets, certified copy of driving licence, prescriptions of the treating physician, disability certificate, X-ray films, a series of medical bills and pathological reports which were marked as Exts.1 to 10 and M.Os.1 to 3. The applicant also adduced oral evidence.

5. The Commissioner after discussing the evidence came to the conclusion that the applicant was a workman under Respondent No. 2 and he had sustained injuries arising out of and in course of his employment. Holding the age of the applicant to be 28 years and his loss of earning capacity to be 100% the Commissioner awarded a sum of Rs. 5,08,296/ -.

6. The said award is assailed in this appeal by the Appellant Insurance Company mainly on the ground that the Commissioner ought to have arrived at a conclusion that the case was a collusive one as the owner had admitted the averments. It was further alleged that the age of the applicant as would be evident from the Voters' Identity Card was 34 years and therefore the Commissioner committed illegality in assessing the compensation taking his age as 28 years. It was alleged that in consonance with the evidence of P.W.2 the loss of disability being 70%, the Tribunal acted illegally in holding the loss of earning capacity of the applicant to be 100%. There being no materials in support of the income of the applicant, the Commissioner committed illegality in holding that his income was Rs. 4,000/ - per month. Relying upon several judgments it is submitted that the amount awarded must be reasonable and it should not be a bonanza for the applicant. This aspect was not kept in mind by the Commissioner. It was further alleged that the direction to pay interest on the compensation was also contrary to law.

7. All the submissions are strongly repudiated by learned Counsel appearing for the applicant-Respondent. It is stated that Ext.A, the Voters Identity Card had absolutely no evidentiary value, in as much as the same was based on hearsay and the person who recorded the age having not been examined nor the source of information was disclosed, the same should not have been accepted. On the other hand it is stated that there are evidence to prove that the age of the applicant was 28 years and the Commissioner has rightly held so. So far as the

disability is concerned according to learned Counsel for the applicant-Respondent No. 1 the bead head tickets of S.C.B. Medical College and Hospital, Cuttack - Ext.7, prescription of Dr. T.K. Satpathy, Asst. Surgeon (Orthopedics) - Ext.9, disability certificate - Ext.10, injury report Ext.3, the medical bills, pathological reports and the oral evidence reveal that the applicant-Respondent No. 1 sustained a fracture of left hand. He was under active treatment and was hospitalized on 29.10.2004 and he underwent several surgeries with internal fixture of ulna and humerus and implant in SITU. It is stated that in spite of all treatments the left elbow of the applicant-Respondent No. 1 was infected and there was discharge of pus. It is submitted that the applicant-Respondent No. 1 who was a driver on the date of accident could not perform that work any further and as such the Commissioner has rightly held that the loss of earning capacity was 100% and there was absolutely no infirmity in such finding.

8. Heard learned Counsel for the parties at length. Perused all the materials available on record. It appears that the applicant Respondent No. 1 had sustained fracture of his left hand apart from other grievous injuries on his person which fact was not disputed. The bead head tickets - Ext.7, the disability certificate - Ext.10 as well as the oral evidence of P.W.2 the treating physician reveal that the applicant Respondent No. 1 sustained compound fracture of lateral condyle of humerus and other fractures. Though he underwent surgical operations his left elbow was infected and there was discharge of pus. Even though the doctor examined on behalf of the Appellant-Insurance Company-O.P.W.1 a Professor of Surgery, equated the case with that of amputation of the hand above elbow, according to him the loss of earning capacity was 70%, whereas according to the treating physician P.W.2 the loss of earning capacity was 100%. Fact remains, that the applicant-Respondent No. 1 was a driver and was rightly suggested by O.P.W.1, the injuries sustained by him could be equated to amputation of the hand over elbow. He will not be in a position to drive any vehicle throughout his life. Thus according to P.W.2 the loss of earning capacity should have been held as 100%. So far as employment and earning of the applicant were concerned only because the owner appeared in Court and filed a written statement supporting the case of the applicant and admitting the relationship of the applicant with him as employee and employer respectively, the submission that the Court ought to have entertained a doubt cannot be accepted.

The evidence, both oral and documentary reveal that the accident was caused due to rash and negligent driving of the driver of the offending vehicle which came and dashed against the truck of which the injured was the driver. There is also enough evidence to reveal that the accident took place in course of and during the employment of the injured-applicant. No rebuttal evidence has been adduced to create any doubt with regard to the cause or the manner of the accident.

But then this Court finds that there was some discrepancy with regard to age and

income of applicant-Respondent No. 1. Though the owner of the offending vehicle has stated that he was paying a sum of Rs. 4,000/ - per month to the applicant towards his salary, no material has been produced to substantiate such statement. So far as the age of the applicant-Respondent No. 1 is concerned though the Voters' Identity Card reveals his age to be 34 years, according to the applicant-Respondent No. 1 he was 28 years. No documentary evidence has been adduced to prove the earning of the injured, of course the employer has admitted the wages paid. Law is well settled that the compensation awarded must be reasonable and should not be the prize money for the applicant and should always be just and proper and in consonance with the injuries sustained. In the case at hand the applicant-Respondent No. 1 was a young man. He sustained injuries and one of his hands has become defunct. He is subjected to tremendous mental agony and pain. He shall suffer the said pain and disability throughout his life.

9. Considering all these facts, in a spirit of Lok Adalat, this Court feels that a sum of Rs. 4,00,000/ - in lump sum would be just, proper and equitable compensation. Accordingly this appeal is disposed of directing the Appellant-Insurance Company to pay a sum of Rs. 4,00,000/ - in lump sum instead of Rs. 5,08,296/ - as awarded by the Commissioner. The direction to pay default interest is also set aside. It is submitted that the entire amount awarded is lying in deposit before the Commissioner. This Court therefore directs that out of the said amount a sum of Rs. 4,00,000/ - with interest accrued thereon shall be disbursed in favour of the applicant-Respondent No. 1 on proper identification.

The balance amount be returned to the Appellant Insurance Company on proper application by a crossed cheque/draft.

The F.A.O. is accordingly disposed of.