

(2015) 05 GAU CK 0035

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 9 of 2006

National Insurance Company Ltd.

APPELLANT

Vs

Kanai Das and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 147 FLR 456 : (2015) 3 LLJ 350

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : S. Roy, for the Appellant

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J—This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (Now renamed as "Employee's Compensation Act, 1923" and herein after referred to as "the Act") has been filed, challenging the judgment and award dated 21.09.2005 passed by the learned Workmen's Compensation Commissioner (for short, "W.C. Commissioner"), Naga on in W.C. Case No. 279 of 2002, on the sole substantial question of law as to whether the learned W.C. Commissioner committed error in considering daily allowance/food allowance as part of the monthly wages of the workman. Although while admitting this appeal on 15.02.2006 the aforesaid substantial question of law was not formally framed yet the memorandum of appeal contains this substantial question of law only as a ground of appeal. I have heard Ms. S. Roy, learned counsel for the appellant. None appears for the respondents although names have been shown in the cause-list.

2. One Kanai Das approached the learned W.C. Commissioner at Nagaon stating that he was engaged as driver of vehicle No. AS-25-B-0392 belonging to one Kutu Saha of Nagaon. The vehicle met with an accident on 19.09.2003 due to mechanical defects and consequently, the claimant sustained injury on his right calcaneus. According to the claimant, he became permanently disabled because

of his injury and so he claimed compensation from the owner and the Insurance Company. The Insurance Company being the opposite party No. 2 appeared and contested the claim. The claimant examined himself as P.W. 1 and the doctor as P.W. 2. Upon considering all the materials available on record, the learned W.C. Commissioner arrived at the finding that the claimant was a workman under opposite party No. 1 and that he sustained injury on his right calcaneus in course of his employment. He, therefore, was entitled to compensation. The learned W.C. Commissioner found that the claimant was getting monthly wages of Rs. 2,000/- and apart from that every day he was paid Rs. 50/- towards food allowance/daily allowance. Considering this daily allowance along with monthly salary his monthly wages was calculated at Rs. 3,500/- and thereupon, compensation was assessed at Rs. 2,57,191/-.

3. It is the case of the Insurance Company/appellant that the learned W.C. Commissioner committed error in considering daily allowance of Rs. 50/- as a part of the monthly salary of the workman and so the appeal needs to be allowed. Apart from this question no other point has been taken in the memorandum of appeal. The question as to whether daily allowance paid to a workman is to be considered as a part of monthly salary is no longer *res integra*. The Hon''ble Supreme Court in the case of Mohd. Ameeruddin and Another Vs. United India Insurance Co. Ltd. and Another, (2011) ACJ 13 : (2011) 162 PLR 453 : (2011) 1 RCR(Rent) 903 : (2011) 1 SCC(Cri) 862 has held that if it is proved on the basis of a preponderance of probability that such daily allowance was regularly paid to a workman as condition of service in that event it has to be considered as part of the monthly salary. Having so found, there is no scope to interfere with the aforesaid judgment and award. No other substantial question of law does arise from the facts and circumstances of the case. Consequently, the appeal is dismissed. Interim order, if any, stands automatically vacated. No order as to costs.