

(2005) 02 GAU CK 0095
In the Gauhati High Court
Case No : M.A.F.No. 4 of 1999

National Insurance Company Ltd.

APPELLANT

Vs

Manuhoram Imochouba Sharma

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 30, 4, 4

Citation : (2005) 3 GLT 435

Hon'ble Judges : B.K.Sharma, J and B.Lamare, J

Bench : Division Bench

Advocate : R.M.Nath, H.Dijen Singh, Advocates appearing for Parties

Judgement

B. K. Sharma, J.

1.This appeal is directed against the judgment and award dated 04.10.99 passed by the Commissioner for Workmen's Compensation, Manipur at Imphal in claim case No. 4/99 awarding the applicant/respondent a sum of Rs. 8,21,000/ (Rs. 8 lakhs and 21 thousands) only with a simple interest at the rate of 12 per cent per annum for the period from 28.12.98 to the date of depositing the amount.

2. The respondent No. 1 as the applicant filed an application before the Commissioner for Workmen's Compensation, Manipur at Imphal claiming compensation against the respondent No. 2 and the present appellant who were arrayed as opposite parties No. 1 and 2 in the claim application. The story narrated in the application was that the respondent No. 1 was a workman under the opposite party No. 1/respondent No. 2 in the capacity of a Driver. On 01.02.98 he received injuries on his right eye and because of the said injuries his right eye was completely damaged resulting in loss of right eye sight. According to the applicant his right side face was also disfigured. The applicant sustained the injuries while driving the vehicle, a Tata Sumo bearing registration No. AS01/F8283 owned by the opposite party No. 1/respondent No. 2. The applicant sustained the injuries during the course of his employment.

3. In the claim application the applicant/ respondent No. 1 claimed compensation of Rs. 8,28,000/ under different heads as provided for in the second Schedule to the Motor Vehicles Act, 1988. They were as follows :

a) General Damage : Rs. 20,000.00

b) Wages loss : Rs. 48,000.00

c) Compensation of permanent disablement : Rs. 7,60,000.00

Total = Rs. 8,28,000.00

4. The Workmen's Compensation Commissioner (hereinafter referred to as the Commissioner) entertained the application and issued notices to the opposite parties. The opposite parties entered appearance before the Commissioner by submitting their respective written statement. While the opposite party No. 1/ respondent No. 2 shifted the burden to the present appellant so far as the payment of compensation is concerned and pleaded that the appellant should indemnify the owner of the vehicle, the appellant in their written statement denied the claim of the applicant/ respondent No. 1 and prayed for dismissal of the claim.

5. The Commissioner on conclusion of the hearing of the claim application passed the impugned judgment and award awarding the aforesaid compensation to the applicant/respondent No. 1. Being aggrieved, the Insurance company against whom the direction has been issued to pay the amount of compensation has filed the instant appeal.

6. According to the appellant the applicant/respondent No. 1 being a workman under the respondent No. 2 and he having filed the claim application under the provisions of Workmen's Compensation Act, 1923, was not a third party so as to attract the provisions of the Motor Vehicles Act, 1988 and that his case was solely governed by the provisions of the Workmen's Compensation Act. Further stand of the appellant is that the applicant/respondent No. 1 having filed his application before the Commissioner, the said Commissioner could not have awarded the compensation invoking the provisions of Section 163 (A) of the Motor Vehicles Act. Other grounds such as award being arbitrary as regards fixation of the quantum of compensation, computation of compensation, findings relating to the monthly salary of the applicant/ respondent No. 1 being erroneous, liability of the owner and the Insurance company at the ratio of 50:50 etc. have also been urged in the appeal.

7. We have heard Mr. R. M. Nath, learned counsel for the appellant and Mr. H. Dijen Singh, learned counsel for the respondent No. 1. None appeared for the respondent No. 2.

8. Mr. Nath submitted that the Commissioner committed manifest error of law in invoking the provisions of the Motor Vehicles Act, 1988 towards fixation of the compensation. He further submitted that the applicant/respondent No. 1 having

filed the application for compensation before the Commissioner, there was no question of applying the provisions of the Motor Vehicles Act towards fixation of the quantum of the compensation. He also submitted that the Commissioner exceeded his jurisdiction in awarding the compensation invoking the provisions of the Motor Vehicles Act. Finally he submitted that even if the claim of the applicant/respondent No. 1 was held to be established, the owner of the vehicle could not have absolved of his liability towards sharing the amount of compensation at the ratio of 50:50.

9. Countering the above arguments of Mr. Nath, Mr. H. Dijen Singh, learned counsel for the respondent No. 1 at the very outset raised the preliminary objection relating to the maintainability of the appeal on the ground of non furnishing the required certificate of the Commissioner certifying that the amount payable under the order appealed against has been deposited. As regards the merit of the case, he submitted that the Commissioner passed the impugned judgment and award as per law. He submitted that the Commissioner did not commit any wrong in invoking the provisions of the Motor Vehicles Act, 1988 towards fixation of the amount of compensation. He also submitted that the defence available to the insurer appellant was limited U/s. 149 of the Motor Vehicle Act, 1988 and that the appellant could not have filed the appeal except as provided U/s. 170 of the said Act. He further submitted that no appeal can be filed on the quantum of the compensation as has been done in the instant case. During the course of his argument, Mr. Singh produced a copy of the order issued by the District Transport Officer (C), Imphal purportedly revoking the driving licence of the applicant/ respondent No. 1 U/s. 16 of the Motor Vehicles Act, 1988 and the rules framed thereunder. He stressed on the meaning of the permanent disablement and submitted that the compensation awarded to the applicant/respondent No. 1 is a just compensation and no interference is called for to the same.

10. As regards the preliminary objection, Mr. Singh placed reliance on the order passed by this Court on 16.08.2000 in Civil Misc. Application No. 31/2000 in M. A.F. No. 3/ 2000 by which it was observed in reference to Section 30 of the Workmen's Compensation Act, 1923 that pre deposit of the amount payable under the order appealed against was mandatory. He also placed reliance on the decision of this Court as reported in 1999 (1) TAG 164 (GAU) (Anil Ch. Sarma Vs. Alka Rani Ghosh). He also placed reliance on some other decisions to bring home to his point of argument in respect of the preliminary objection as well as on merit of the case. Those decisions are in respect of the requirement of compliance of the preconditions stipulated in Section 30 of the Workmen's Compensation Act, 1923 towards preferring an appeal, limited defence available to Insurance Company, meaning of permanent disablement, overriding effect of the Motor Vehicles Act even to the extent of prevailing over the Workmen's Compensation Act, liability of the Insurance Company in absence of any specific pleadings, determination of the wages can not be challenged in the appeal etc.

11. The decisions on which Mr. Singh placed reliance are as follows:

- 1) AIR 1961 SC1134
- 2) AIR 1988 SC 2010 " 3)1982ACJ03
- 4) 1997 (1) TAG 740
- 5) 1998 TAG 904
- 6) 1998 (2) TAG 153
- 7) 2002 (10) SBR 227
- 8) (1976) 1 SCC 289
- 9) 2002 (3) GLT 358
- 10) 1998 ACJ 970.

12. We have given our anxious consideration to the submission made by the learned counsel for the parties. We have also considered the materials available on record including the case laws on which the learned counsel for the respondents placed reliance. We first deal with the preliminary objection raised by the learned counsel for the applicant/respondent No. 1. It is true that the appeal filed by the Insurance Company U/s. 30 of the Workmen's Compensation Act, 1923 was not accompanied by a certificate of the Commissioner certifying the deposit of the amount awarded. This aspect of the matter was taken into consideration by this Court in its order dated 24.01.01. Upon hearing the learned counsel for the parties, this Court by the said order held the defect to be a curable irregularity. It was noticed that the amount of compensation was already deposited with the Registry of the High Court. Even prior to that, this Court by order dated 31.01.01 passed in Civil Misc. case No. 1/2000 preferred by the applicant/respondent No. 1 making a prayer therein to hear the question relating to the maintainability of the appeal on the ground of the appeal being not accompanied by the certificate of the Commissioner, held that since the amount was already deposited with the Registry of the High Court, the appeal could not be said to be not maintainable. By the said order the Civil Misc. appeal No. 1/2000 preferred by the applicant/respondent No. 1 was rejected.

13. Thus it appears that the preliminary objection raised on behalf of the applicant/ respondent No. 1 was already gone into by this Court at least on two occasions and was rejected. This Court did not find favour with the plea of the applicant/respondent No. 1 relating to the objection in respect of the maintainability of the appeal on the ground of non compliance of the requirement of furnishing the certificate of the Commissioner certifying the deposit of the amount in respect of which the appeal was preferred. It is not a case of preferring the appeal without depositing the amount of compensation awarded by the Commissioner. The appellant instead of depositing the amount with the Commissioner has deposited the same with the Registry of the High Court and

this Court having noticed the same passed the aforesaid orders holding the initial defect to be a curable one. Even the application preferred by the applicant/respondent No. 1 urging the ground of non maintainability of the appeal was rejected. Thus, on both counts, i.e. the preliminary objection raised on behalf of the applicant/respondent No. 1 has been dealt with rejecting the same and that the deposits have been made by the appellant with the High Court Registry, the preliminary objection raised by the applicant/respondent No. 1 cannot be sustained.

14. There is another aspect of the matter. The applicant/respondent No. 1 himself has withdrawn the amount of Rs. 3 lakhs out of the said deposits made by the appellant with the Registry of the High Court. We are of the opinion that merely because the deposit was not made with the Commissioner but was made to the Registry of the High Court and that too with the permission of this Court, the preliminary objection raised on behalf of the applicant is not sustainable and accordingly we reject the same.

15. The answer to the preliminary objection in the above manner leads us to the merits of the appeal. There is no dispute, rather admitted by the learned counsel for the respondent No. 1 that the application was filed by the applicant before the Commissioner as per the provisions of the Workmen's Compensation Act, 1923. Section 3 of the said Act deals with the employer's liability for compensation. Section 4 of the Act lays down the criteria towards fixation of the amount of compensation. Section 5 deals with the method of calculating the wages. Chapter 3 of the Act deals with the detailed procedure relating to reference to the Commissioner, their appointments, power and procedure of the Commissioner etc. The Workmen's Compensation Act, 1923 is self contained Code having the inbuilt provision relating to payment of compensation by a certain classes of employers to their workmen of compensation for injury by accident. Section 4 of the Act deals with the procedure relating to the fixation of amount of compensation.

16. In the instant case, the applicant/respondent No. 1 filed his application before the Commissioner invoking the provisions of the Workmen's Compensation Act, 1923. Thus it was incumbent on the Commissioner to fix the quantum of compensation as per the provisions of the Section 4 of the Act." However, we find that the Commissioner fixed the quantum applying the provisions of Motor Vehicles Act, 1988. In this connection, the Commissioner while deciding the question No. 3 "whether the amount of compensation claimed is due or any part of that amount" dealt with the arguments made on behalf of the applicant that the amount of compensation was payable U/s. 163A of the Motor Vehicles Act, 1988. He also dealt with the arguments that compensation for permanent disablement for a sum of Rs. 7,60,000 was payable under item No. 4 and 5 of the second Schedule of the Motor Vehicles Act, 1988. However, without assigning any reason, the Commissioner held that on combined reading of Section 4 of the Workmen's Compensation Act, 1923 and Section 163A of the

Motor Vehicles Act, 1988, the provisions of Section 163A of the Motor Vehicles Act, 1988 would override the provisions of Section 4 of the Workmen's Compensation Act, 1923.

17. It is on the above basis the Commissioner proceeded to determine the amount of compensation payable to the applicant/respondent No. 1. Thus, while entertaining the application under the provisions of Workmen's Compensation Act, 1923 so far as the quantum of the compensation is concerned, same was arrived at by the Commissioner applying the provisions of the Motor Vehicles Act, 1988. It was held by the Commissioner that although the case of the applicant/respondent No. 1 was a workmen's case, nonetheless same attracted the provisions of Section 163A of the Motor Vehicles Act, 1988. After so holding, the Commissioner fixed the quantum of compensation as per second Schedule U/s 163A of the Motor Vehicles Act, 1988. We are of the considered opinion that such fixation of the amount of compensation by the Commissioner invoking the provisions of Section 163A of the Motor Vehicles Act, 1988 was erroneous and clearly an error of jurisdiction on the part of the Commissioner.

18. Admittedly, the applicant/respondent No. 1 did not make a claim under the Motor Vehicles Act, 1988, but he made a claim under the provisions of the Workmen's Compensation Act, 1923. As noticed above, the Act of 1923 is a self contained Code and Section 4 of the Act itself lays down the criteria for fixation of compensation. Thus, the Commissioner was called upon to determine the compensation only as per the provisions of the Workmen's Compensation Act, 1923. But while doing so, he fixed the quantum invoking the provisions of Section 163A of the Motor Vehicles Act, 1988 which we are of the opinion that the Commissioner could not have invoked.

19. Mr. Singh, learned counsel for the respondent No. 1 heavily relied upon the judgment of this Court in Anil Ch. Sarmah (supra). We have gone through the same. That was a case relating to the liability of the Insurance Company even in respect of a claim under the Workmen's Compensation Act, 1923. In that case the Commissioner held the owner of the vehicle/employer to be liable for the compensation although the liability was indemnified with the Insurance Company. It was in that context, this Court held that the provisions of the Workmen's Compensation Act cannot be read in detachment overlooking the express provisions of the Motor Vehicles Act and thereby exonerating the Insurance Company from its contractual as well as from statutory liability. It was held that the Insurer was also liable to pay compensation under the Workmen's Compensation Act. It was further held that the liability of any person to pay compensation as envisaged in Section 19 of the Act comprehended the Insurer also.

20. It was in the above context noticing the earlier decision of this Court as reported in 1987 ACJ655 (Oriental Fire Insurance Ltd. Vs. Nani Bala Devi & Am. that the applicability of the provisions of the Motor Vehicles Act, 1988, in so far as the claim under the Workmen's Compensation Act, 1923 is concerned in the

given context was emphasized. That was a decision relating to the liability of the Insurance Company even under the Workmen's Compensation Act, 1923. There cannot be any second opinion relating to the said proposition of law. However, in the present proceeding we are concerned with the question as to whether the yardstick applicable towards fixation of the amount of compensation under the Motor Vehicles Act would also be applicable to a claim made under the provisions of the Workmen's Compensation Act, 1923. We have already noticed and opined that the claim made by the claimant/respondent No. 1 being one under the provisions of the Workmen's Compensation Act, 1923 and there being inbuilt provisions in the Act itself towards fixation of the quantum of compensation, the Commissioner could not have fixed the same invoking the provisions of the Motor Vehicles Act.

21. Altogether different criteria and liability are fixed under both the Acts. While it is the liability of the employer under the provision of Workmen's Compensation Act to pay compensation to the workmen on account of death or injury during the course of employment, it is the liability of the Insurance Company on proved negligence and under the given circumstances specified under the provisions of Motor Vehicles Act, 1988. Thus on this score also the Commissioner could not have fixed the amount of compensation as has been fixed in the impugned judgment and award applying the parameters applicable to a case under the provisions of Motor Vehicles Act, 1988. There was no question of applying the said provisions on an application made under the Workmen's Compensation Act, 1923, more particularly, when the said Act of 1923 itself contains inbuilt provisions towards fixation of the quantum of compensation in respect of the workmen suffering injuries during the course of employment. The liability of the Insurance Company will be only to the extent of the liability fixed under the provisions of the Workmen's Compensation Act, 1923 and not in respect of the manner and method in which the Commissioner in the instant case has fixed the liability against the Insurance Company/appellant applying the provisions of the Motor Vehicles Act, 1988.

22. For the foregoing reasons and discussions we have no hesitation to set aside and quash the impugned judgment and award dated 04.10.99 passed by the Commissioner for Workmen's Compensation, Manipur at Imphal in claim case No. 4/99. While agreeing with the ratio of the decisions referred to by the learned counsel for the respondents, it can only be said that those decisions are not applicable to the facts and circumstances involved in this case.

23. In terms of the interim orders passed by this Court, the applicant/respondent No. 1 has already drawn an amount of Rs. 3 lakhs out of the total deposits made by the appellant. Upon setting aside the judgment and award passed by the Commissioner, the matter shall now stand remitted back to the Commissioner for a fresh decision in respect of the claim of the applicant/respondent No. 1. He shall decide the claim strictly in accordance with the provisions of the Workmen's Compensation Act, 1923. While doing so, he will not be guided by the criteria/

yardstick applied in respect of the claim made under the Motor Vehicles Act, 1988, but shall be guided by the inbuilt provisions of the Workmen's Compensation Act, 1923. In the event of awarding compensation to the applicant/respondent No. 1 by the Commissioner in the above manner, the amount of compensation awarded in favour of the applicant/respondent No. 1 shall stand adjusted with the aforesaid amount of Rs. 3 lakhs already drawn by him. The balance amount, if any, shall be refunded to the Insurance Company/appellant. The appellant has altogether deposited an amount of Rs. 9,14,662/-. The balance amount after deducting the already drawn amount of Rs. 3 lakhs shall be refunded to Insurance Company/appellant by the Registry of the Court along with the accrued interest.

24. Entire exercise shall be carried out by the Commissioner as early as possible but at any rate not later than six (6) months from the date of receipt of the certified copy of this judgment and order from the either parties. The aforesaid amount of Rs. 3 lakhs already received by the applicant/respondent No. 1 shall be subject to the outcome of the results of the fresh consideration now to be made by the Commissioner in terms of this judgment and order. In the event of awarding any compensation, the amount shall be adjusted against the said amount of Rs. 3 lakhs. The balance amount, if any, (which might be even total amount of Rs. 3 lakhs already drawn by the applicant/respondent No. 1) shall be refunded to the Insurance Company/appellant by the applicant/respondent No. 1 payment of which was always subject to the outcome of the results of this appeal.

25. The appeal stands allowed to the extent indicated above, leaving the parties to bear their own costs.