
(2015) 02 GAU CK 0020
In the Gauhati High Court
Case No : Case No. MFA 129/2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Ajit Das and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4(1)(c)(ii)

Citation : (2015) 4 ACC 431 : (2015) 146 FLR 761 : (2015) 2 GLT 777 : (2015) 2 LLN 383

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : A. Sharma, for the Appellant; D.K. Saikia, Advocates for the Respondent

Judgement

Nishitendu Chaudhury, J.—Heard Mr. A. Sharma, learned counsel for the appellant and Mr. D.K. Saikia, learned counsel for the claimant respondent No. 1. None appears for the respondent No. 2 who is the owner of the vehicle.

2. This appeal under Section 30 of the Workmen's Compensation Act, 1923 has been preferred by the insurance company challenging the judgment and award dated 25.02.2004 passed by the Commissioner, Workmen's Compensation, Guwahati in W.C. Case No. 19/2003. By that judgment, the Workmen's Compensation Commissioner held that owner is liable to pay Rs. 1,10,502/- to the claimant under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. However, having noticed that the case was covered by valid insurance policy under United India Insurance Company Limited, the learned Workmen's Compensation Commissioner held that the insurance company shall indemnify the owner in view of persisting policy and shall make payment to the claimant. It is this judgment dated 25.02.2004 which has been assailed in this appeal.

3. An appeal under Section 30 of the Workmen's Compensation Act, 1923 can be heard only on a substantial question of law. However, on 24.11.2004 when the appeal was admitted, no such substantial question of law was framed. Having

heard the learned counsel for the parties, this court has framed the following substantial question of law today:

"Whether the finding of the Workmen's Compensation Commissioner that insurance company is liable to indemnify the owner of the vehicle is perverse?"

4. Both the learned counsel are heard on this substantial question of law. For deciding the substantial question of law it is necessary to state the basic minimum facts involved in this appeal. Claimant Ajit Das was employed by the owner respondent No. 2 as handyman in bus No. AS-15/3483. On 21.07.2002 when the aforesaid bus was plying from Mandia towards Barpeta, it met with an accident and consequently handyman/claimant sustained fracture injuries on 8th and 9th right ribs of his chest apart from other injuries over the body. He was immediately taken to Barpeta Civil Hospital and treated by Senior Medical and Health Officer of that hospital. According to the claimant, because of those injuries he became permanently disabled partially and so lodged a claim petition before the jurisdictional Workmen's Compensation Commissioner staking claim of compensation. He stated that he was getting monthly salary of Rs. 4,000/- from the owner. The aforesaid vehicular accident gave rise to Barpeta P.S. G.D. Entry No. 664 dated 21.07.2002.

5. The owner of the vehicle as well as the insurance company appeared and submitted written statement. The owner disclosed that vehicle was covered by a valid insurance policy of the respondent No. 2, namely, United India Insurance Company Limited. The insurance company, on the other hand, denied the averments made in the claim petition not only about the liability but also about the correctness of the incident as a whole. In course of trial, claimant examined himself as PW 1 and one Dr. S.C. Sarma was examined as PW 2. The claimant also adduced documentary evidence like doctor's prescription (Ext. 1), X-ray report (Ext. 2), medical certificate (Ext. 3), police report (Ext. 4) etc. PW 2, Dr. S.C. Sarma, proved the injuries and stated that the disability of the claimant is permanent and amounts to 30%. He also assessed the consequent loss of earning capacity at 25%. He stated that the injury is permanent and partial. In course of cross examination, he admitted that he was only an M.B.B.S. doctor and did not possess any specialized qualification in orthopaedic surgery. Claimant stated in his deposition that on 21.07.2002 while on duty, the bus met with an accident as a result of which two of his ribs were broken. He also received injuries on other parts of the body. He claimed to have been treated in Barpeta Civil Hospital for the aforesaid injuries. He claimed that because of these injuries, he was permanently incapacitated and was unable to work as a handyman. He complained that the owner did not make any payment whatsoever to him either towards his treatment or towards his rehabilitation. He stated that he was 40 years old at the time of accident. On the basis of the aforesaid evidence, the Workmen's Compensation Commissioner held that monthly income of the claimant was Rs. 4,000/-, that he was 40 year old at the time of accident and so the amount of compensation would be 60% of Rs. 4,000/- multiplied by 20% being the magnitude of loss of income and thus on being multiplied by

appropriate factor, the amount was calculated at Rs. 1,10,502/-. Accordingly, award was passed for payment of compensation to the claimant. The Tribunal also noticed that the vehicle was covered by insurance policy No. 130602/31/02/00576 of the United India Insurance Company Limited and the policy was in force at the time of the accident. Accordingly, the Workmen's Compensation Commissioner directed the insurance company to make payment of the compensation amount to the claimant.

6. Owner respondent No. 2 has been duly served with notice as revealed from the office note. But no one has put up appearance on behalf of respondent No. 2. Mr. D.K. Saikia, learned counsel for the claimant urges that the Workmen's Compensation Commissioner did not commit any mistake in assessing the compensation at Rs. 1, 10, 502/- and so there is no question of interfering with the award at all. Mr. A. Sharma, learned counsel for the appellant, however, submits that he has nothing to say on the quantum of the compensation awarded but policy document having been brought on record; reveals that there was no payment of premium by the owner to extend insurance coverage to the handyman. The vehicle was insured for the driver and third party passengers and not for the handyman at all. Pointing out these facts, learned counsel for the appellant would argue that insurance company be absolved from its liability to make payment and the award in so far as it relates to the owner does not require to be interfered with.

7. Mr. A. Sharma has placed reliance in the case of Ramashray Singh Vs. New India Assurance Co. Ltd. and Others, . This judgment was followed by this Court in the case of National Insurance Co. Ltd. Vs. Mahananda Das and Another, . In paragraph 7 of the judgment, this Court discussed the Supreme Court's judgment of Ramashray Singh (supra) and observed that proviso to sub-section 147(b) comes out of an exception in respect of one class of "persons" and "passengers", namely, employees of the insured. In other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. The insured can enter into an agreement to cover other employees as well, but under the proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of death and injury arising out of and in course of any employment of the person insured unless first, the liability of the insured arises under the Workmen's Compensation Act, 1923 and second, if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor a conductor nor an examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "any passenger". If this were permissible, then there would be no need to make special provisions for employees of the insured.

8. In the case in hand, the certificate of insurance which has been brought on record by the owner does not reveal that handyman is covered by the insurance

policy. The driver is covered and the passengers are covered and there is no mention about the handyman. This being the position, it is to be held that finding of the learned Workmen's Compensation Commissioner as to liability of the insurance company to indemnify the owner against liability to the handyman is not based on materials available on record. The finding being perverse, the sole substantial question of law stands answered in favour of the appellant and against the respondent No. 2, owner of the vehicle. The owner respondent No. 2 shall be liable to make payment of the amount to the claimant. The amount that has already been disbursed to the Workman, however, shall not be recovered. But this said amount shall be adjusted against the total amount to be paid by the owner of the vehicle.

9. No order as to costs.

10. Interim order, if any, stands automatically vacated.