

(2019) 09 GAU CK 0033

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 213 Of 2010

New India Assurance Co. Ltd @APPELLANT@Hash Md. Rabi Hussain And Anr

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 GAU CK 0033

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : R D Kakati, S Banik

Final Decision : Allowed

Judgement

1. Heard Ms. R Gangawat, learned counsel for the appellant insurance company. Also heard Mr. S Banik, learned Legal Aid Counsel appearing for the respondent workman claimant.

2. This appeal is preferred against the Judgment and order, dated 20.04.2010 of the learned Commissioner, Workmen's Compensation, Tezpur, Assam in WC Case No.01 of 2007 by which the respondent No.1 workman claimant claims for a compensation against the injuries which he has suffered while he was in employment under the respondent No.2.

3. Without going into any other aspects, we have taken note that in the cross-examination, the appellant insurance company had raised the question that the owner of the vehicle, namely, Basu Ghosh had died in the year 2004 whereas, the claim therein in respect of the injuries that was sustained by the claimant respondent No. 1 was in the year 2006. We have noticed that the said part of the cross-examination by the insurance company was not given due consideration by the learned Commissioner while passing the impugned Judgment and order.

4. We are specially perturbed by the stand taken by the insurance company that if the owner Basu Ghosh had died in the year 2004, the records of the insurance company shows that the proposal for the insurance was signed by Basu Ghosh in the year 2005. If it is so, the policy itself was fraudulently obtained and if the

policy itself was fraudulently obtained, the insurance company would not be liable to honour the compensation award in favour of the respondent No.1 claimant .

6. We have further taken note of that the owner of the vehicle Basu Ghosh inspite of notice being sent to him had not appeared before the learned Commissioner.

7. If Basu Ghosh was the owner of the vehicle and he had died in the year 2004 and the claimant workman had not revealed the said fact and continued with the proceeding by making him a respondent, it would also amount to be a fraud being committed by the claimant workman.

8. In such view of the matter, we interfere with the Judgment and Order dated 20.04.2010 of the Workmen's Compensation, Tezpur, Assam in WC Case No.01 of 2007 and remand the matter back to the learned Commissioner to adjudicate upon as to whether the owner of the vehicle Basu Ghosh had died in the year 2004 or in other words whether he was alive on the date of the proceeding so initiated against him by the Workmen's Compensation.

9. In terms of the above, the appeal stands allowed.

10. LCR, if any, be sent back

11. We have gone through the Notification dated 09.07.2016 of the Assam State Legal Services Authority which provides for the honorarium payable to the learned advocate for their appearance. The honorarium payable for appearing before the Single Bench is Rs.5000/-in admission and Rs.7000/- for final disposal. As in the instant case, Mr. S Banik, learned Legal Aid Counsel had appeared for the final hearing of the matter, we order that an honorarium of Rs.7000/- be paid to him. Before parting with the record, we would also like to appreciate the valuable service rendered by Mr. S Banik, learned Legal Aid Counsel. Accordingly, it is directed that Mr. S Banik be paid Rs.7000/- by the State Legal Services Authority upon production of a copy of this order.