(2024) 05 GAU CK 0041

In the Gauhati High Court

Case No : MFA No. 188 Of 2017

New India Assurance Company Limited APPELLANT

Vs

Dipti Dutta And 2 Ors RESPONDENT

Date of Decision : 28-05-2024

Acts Referred:

Employee?s Compensation Act, 1923 — Section 30

Citation : (2024) 05 GAU CK 0041

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : K.K. Bhatta, S.C. Biswas, B.J. Mukherjee

Final Decision : Dismissed

Judgement

1. Heard Mr. K.K. Bhatta, learned counsel representing the appellant Insurance Company as well as Mr. S.C. Biswas and Mr. B.J. Mukherjee, learned counsel appearing for the respondents.

2. This is an appeal under Section 30 of the Employee’s Compensation Act, 1923 challenging the judgment and order dated 12.05.2017 passed by the Commissioner for Workmen’s Compensation, North Salmara Sub-Division at Bongaigaon in W.C. Case No.01/2016.

3. Late Uttam Dutta was a worker, working in M/S. Gayetri Projects Ltd. which was involved in construction of a flyover at Chaprakata. On 17.10.2015 at about 7 A.M., while Uttam Dutta was doing his duties, some construction materials fell upon him. He sustained serious injuries on his head and on the other parts of the body. He was immediately shifted to Lower Assam Hospital & Research Centre, Bongaigaon. Subsequently, for better treatment, he was referred to Narayana Super Speciality Hospital at Guwahati. On 24.10.2015, Uttam Dutta had succumbed to his injuries.

4. Late Uttam Dutta was 40 years old and he used to draw a salary of ☐ 7,320/- per month along with other allowances. Therefore, his legal heirs filed a claim

petition before the Commissioner for Workmen's Compensation, North Salmara Sub-Division at Bongaigaon seeking compensation of ☐ 15,000,00/- (Rupees Fifteen Lakhs).

5. The appellant Insurance Company contested the claim petition by filing a written statement. There, the Insurance Company has denied the incident where Uttam Dutta had sustained injuries. It further claimed that G.D. Entry No.549/2015 dated 25.10.2015 has no nexus to the occurrence.

6. On the basis of the pleadings of the parties, the Commissioner framed three issues, which reads as under:

I. Whether the deceased Uttam Dutta was a workman within the meaning of Workmen's Compensation Act, 1923?

II. Whether the accident arose out of an in course of employment under the Opposite Party No.2?

III. Whether the applicants are entitled to the compensation from the Opposite Parties? If yes, by whom?

7. During the hearing of the case, the claimants/respondents examined witnesses. On the basis of the evidence on record, the learned Commissioner awarded a compensation of ☐ 6,79,062/- along with an interest @ 12% per annum.

8. Aggrieved by the aforesaid judgment, the Insurance Company has filed the present appeal. This appeal was admitted for hearing upon the following two substantial questions of law:

i. Whether the learned Commissioner committed wrong in passing an award for ☐ 6,79,062/- ignoring the policy schedule which shows that monthly wage of an unskilled worker is ☐ 2,816.60 and accordingly, the liability of the appellant comes at ☐ 2,59,311.36 (50% of 2816.50 x 184.17)?

ii. Whether the learned Commissioner committed wrong in considering the monthly wages of the deceased at ☐ 7,320/- without following the policy schedule, which shows that the insured M/S. Gayetri Project Ltd. took a policy for 30 unskilled workers with a cash total wages of ☐ 10,50,000/- per annum and as per declaration of the insured; the monthly wages for an unskilled worker comes at ☐ 2,816.60.

9. The learned counsel Mr. Bhatta has submitted that the award granted by the learned Commissioner is a violation of the Insurance Policy and therefore, the impugned judgment needs to be interfered with.

10. Mr. Mukherjee, on the other hand, submits that this plea was not taken by the Insurance Company in their written statement nor the policy was produced before the learned Commissioner.

11. In order to buttress his point, Mr. Mukherjee has relied upon an observation

of the Supreme Court that was delivered in Fahim Ahmad v. United India Insurance Co. Ltd., (2014) 14 SCC 148. Paragraph 6 of this judgment is quoted as under:

“6. Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor was any evidence led to prove the same. In our opinion, it was mandatory for Respondent 1 Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein.”

12. I have given my anxious considerations to the submissions made by the learned counsel of both sides.

13. In this appeal, the appellant has taken the plea of breach of conditions of policy whereas before the Commissioner, this plea was not taken. This plea should have been taken and proved before the Commissioner by adducing positive evidence. The appellant Insurance Company did not do that. In absence of any such evidence, the learned Commissioner had arrived at a correct finding.

14. This Court is of the opinion that there is nothing wrong in the judgment passed by the learned Commissioner. The appeal is found to be devoid of merit.

15. Accordingly, the appeal stands dismissed and disposed of.

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