

(2004) 03 AHC CK 0160

In the Allahabad High Court

Case No : First Appeal From Order No. 248 of 1999

New India Assurance Company Ltd.

APPELLANT

Vs

Karan Singh & Ors.

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)(M), 30, 4(1)

Citation : (2004) 03 AHC CK 0160

Hon'ble Judges : V.N.Singh, J and A.K.Yog, J

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant, Sri Dinesh Pathak and learned counsel for the claimant respondent Mohd. Naushad Siddiqui.

2. Present First Appeal From Order, under Section 30, Workmen's Compensation Act, arises against compensation award dated February 1, 1998 passed by Workmen's Compensation Commissioner, U.P. Kanpur Kshetra Kanpur in Workmen's Compensation Case No. 41 of 1998, Karan Singh v. Subhash Chandra and others, by means of which Workmen's Compensation Commissioner came to the conclusion on the ground that concerned workman had suffered injuries during course of employment and as a consequence of the said injury his right leg (sic leg) just below the knee was imputed and he had suffered complete disability.

3. It is not disputed that the workmen was employed as driver of truck in question. He claimed that he was getting wages at the rate of Rs. 2,200/ per month alongwith Khuraki at the rate of Rs. 50/ per day. The Insurance Company had contested the case. Learned Counsel for the Insurance Company, however, submitted that Khuraki could not be included in the wages in view of the provisions contained in Section 2 (1) (M) Workmen's Compensation Act (as amended up to date) for short called "the Act".

4. Expression "wages" as defined "includes any privilege being estimated in

money" other than (i) travelling allowance (ii) value of any traveling concession paid by any employer towards any pension or provident fund (iii) any sum paid to the workmen to cover any special expenses entailed on him by the nature of his employment.

5. Learned counsel for the claimant respondents referred to the decision in the case of Oriental Insurance Company Ltd. v. T. Pitchaimani and others, 1999 Accident Claims Journal 537 (Pr11), where in the learned Single Judge of the said Court considering various other decisions held that

?I am not inclined to accept the only submission made by the learned counsel for the appellant that the `batta" paid to the workman in this case shall not be taken into account while computing the wages as defined under Section 2 (1) (m) of the Act.....From the nature of the claim in this case, it appears to me that the workman can claim that amount as a matter of right and he was not at the sweet will and disposal of his employer.....I am of the opinion that the authority under the Workmen's Compensation Act had not committed any illegality in taking into account the sum paid to the workman as `batta" in arriving at the `wages" earned by the workman per month.?

6. No decision of this Court has been cited. However in the facts and evidence of the case we do not find any necessity to enter into the above noted controversies issue.

7. The Workmen's Compensation Commissioner has observed that the employer admitted that the workman was getting Rs. 2,000/ per month along with Khuraki and that claimant has produced no documentary evidence to establish otherwise.

8. It may be noted that accident in question took place in the year 1997 when Explanation II appended to Section 4 (1) provides that "where monthly wages of a workman exceeds, two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be rupees two thousand only".

9. In that view of the matter we do not find any error in computing compensation by the Workmen's Compensation Commission. Consequently appeal has no merit.

10. It is, accordingly, dismissed.

11. No order as to costs.