
(2013) 06 GAU CK 0018
In the Gauhati High Court
Case No : M.F.A. No. 75 of 2003

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Dayal Ch. Nath and Manoj Sarmah		RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Workmens Compensation Act, 1923 — Section 30

Citation : (2013) 4 ACC 190

Hon'ble Judges : A.K. Goswami, J

Bench : Single Bench

Advocate : S. Dutta, for the Appellant;

Final Decision : Disposed Off

Judgement

A.K. Goswami, J.—Heard Mr. S. Dutta, learned Counsel for the Appellant. None appears for the respondents. This appeal is directed against the Judgment dated 01.10.2002 passed in N.W.C. Case No. 338/2001 by the learned Commissioner for Workmen's Compensation, Nagaon, awarding a sum of Rs. 1,56,175/- alongwith simple interest @12% per annum from the date of accident to the date of deposit to the respondent No. 1, who was employed as handyman in a truck with Registration No. As-02/A-3183, on account of injuries sustained by him in a vehicular accident involving the said truck on 16.10.2001.

2. The appellant insurance company had deposited the amount of Rs. 1,56,175/- on 22.04.2003 before the learned Commissioner for Workmen's Compensation. In view of the order passed by this Court on 10.02.2012 directing release of 50% of the aforesaid amount in Misc. Case No. 421/2012, the learned Tribunal released an amount of Rs. 78,087/- to the respondent No. 1 on 21.02.2012.

3. When the appeal was admitted to be heard on 11.05.2004, no substantial question of law was framed. On 02.03.2012, noticing the same, as a substantial question of law is to be framed u/s 30 of the Workmen's Compensation Act,

1923, for short, the Act, the Court framed the following substantial question of law:

Whether the learned Commissioner was justified in accepting the evidence of the doctor (PW-2) relating to 40% loss of earning capacity, keeping in view the nature of injuries sustained by the workman as well as the nature of job for which he was engaged.

4. Today, at the hearing, Mr. S. Dutta, learned counsel for the appellant submits that another substantial question of law is required to be framed as to whether interest can be awarded in case of injury from the date of accident. It is submitted by him that the law is well settled that u/s 100 of the CPC, the High Court would be at liberty to hear the appeal on any other substantial question of law, not earlier formulated by it, if the court is satisfied that the case involves such question and the court also records reasons for such satisfaction. He submits that the analogy can be appropriately drawn in an appeal arising out of an award passed by the Commissioner for Workmen's Compensation.

5. A perusal of the materials on record would go to show that such substantial question of law as suggested by Mr. Dutta does arise in the facts of this case and it would be just and proper to formulate the following substantial question of law:

Whether interest can be awarded in case of injury from the date of accident?

6. With regard to the first substantial question of law formulated by this Court on 02.03.2012, Mr. Dutta submits that the learned Commissioner ought not to have in a routine manner accepted the evidence of P.W. 2 who had opined that the workman suffered 40% loss of earning capacity without any basis. Therefore, according to him, it will be necessary for this court to remand the matter to the learned Commissioner for a fresh appraisal, if necessary, by re-examination of P.W. 2.

7. With regard to the substantial question of law formulated today, the learned counsel submits that it is no longer *res integra* that simple interest is to be awarded from the date of adjudication and not from the date of accident and in support of his submission, the learned counsel places reliance on the case of *Oriental Insurance Co. Ltd. Vs. Paren Narzary and Another*, .

8. The evidence of P.W. 1 shows that even after lot of treatment, he had not fully recovered from the fractured injury sustained by him on the wrist. He has stated in his evidence that he could not do much work with his right hand. He could not change tyres or wash the vehicle and as such he had left the job of handyman.

9. The evidence of P.W. 2 shows that after examination of the injured, he had issued a certificate that the workman suffered from disability to the extent of 18%. Accordingly, he had deposed that the workman had suffered 40% loss of earning capacity. The records of the learned Commissioner show that there was no cross-examination of both these witnesses. Order-Sheet of the learned Commissioner also shows that the insurance company did not contest the

proceeding inspite of receipt of notice and the case had proceeded ex-parte. Thus, the evidence of the witnesses has remained unimpeached. I am also conscious that the Act is a beneficial piece of legislation. In that view of the matter, I am unable to persuade myself to accept, at this point of time, the submission of Mr. Dutta that it is a case of remand as the learned Commissioner was not justified to award compensation taking loss of earning capacity at 40%.

10. With regard to the second substantial question of law, it appears that the appellant has a point. The submission of the appellant is substantiated in *Paren Narzary* (Supra), wherein this Court, following judgments of the Apex Court, had ordered payment of interest @ 12% per annum from the date of adjudication.

11. In view of the above, the impugned judgment is modified to the extent that the workman would be entitled to simple interest @ 12% per annum calculated with effect from 01.10.2002, instead of 16.10.2001, as indicated in the Judgment, till the date of deposit i.e. 22.04.2003. The interest component shall be deposited by the appellant within a period of 45 days from today, failing which, interest @ 12% per annum will accrue on the aforesaid sum till payment is made.

12. The appeal, accordingly, stands disposed of.

13. Send back the records. As the workman/respondent No. 1 is not represented by his counsel today, Registry will send a communication to the respondent No. 1 in the address given in the memo of appeal intimating the passing of the judgment.