

(2012) 06 AHC CK 0028
In the Allahabad High Court

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Madan Singh and Another		RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Citation : (2012) 06 AHC CK 0028

Hon'ble Judges : Arun Tandon, J and Ram Surat Ram (Maurya), J

Final Decision : Dismissed

Judgement

Arun Tandon & Ram Surat Ram (Maurya), J.—Heard counsel for the appellant.

2. This appeal has been filed against the award of Workmen Compensation Commissioner, Saharanpur dated 25.4.2012 passed in W.C.A. Case No. 19 of 2012, by which a compensation of Rs. 2,15,773/ has been awarded to Madan Singh, respondent no. 1, for the injuries suffered by him during the course of employment.

3. Madan Singh (respondent no. 1) filed the aforesaid claim petition alleging therein that he was employed as a driver on contract basis with M/s. Uttarakhand State Road Transport Corporation Limited. On 17.1.2011 at about 8.15 hours, he was driving bus no. U.K. 07 PA 0032, belonging to Uttarakhand State Road Transport Corporation (respondent no.2). The bus met with an accident with truck no. U.P. 2T 2443, claimant received injuries. He was admitted to Sugandha Nursing Home for treatment on 17.1.2011. Thereafter he was shifted to Shyam Orthopaedic and Trauma Centre, where he remained under treatment upto 29.1.2011. During treatment he has incurred expenses worth Rs. 75,000/ for medical expenses. Date of Birth of the claimant was 7.7.1964 and at the time of accident his age was about 46 years. He was getting salary @Rs. 1.20 per km., which works out to about Rs. 12,000/ per month. Due to accident, the claimant has suffered disability due to which he was unable to discharge his duties and accordingly, he suffered 100 percent loss of earning capacity. On these allegations, the claim petition was filed.

4. On notice being issued to Uttarakhand State Road Transport Corporation (respondent no. 2), it filed written statement in which employment as well as accident of the claimant has been admitted. It has been stated that the claimant was employed on contract basis and was getting wages @Rs. 1.20 per km., total whereof comes to Rs. 67, 000/ per month. It has been stated that the vehicle was insured and therefore the insurance company was liable of indemnifying the corporation. Respondent also filed the papers relating to the insurance before the Commissioner.

5. The appellant also filed his written statement, the allegations made in the claim petition were denied for want of knowledge. However, it was admitted that the claimant was employed on contract basis with respondent no. 2.

6. Before the Commissioner the claimant produced documentary evidence i.e. copy of First Information Report dated 17.1.2011, the papers relating to admission in Government Hospital Saharanpur and injury report as well as disability certificate issued by Chief Medical Officer. He also filed copy of his driving licence, fitness certificate, and registration certificate of the vehicle. The claimant also filed Xray plate and report and the vouchers relating to his treatment and medical expenses. Apart from the documentary evidence, the claimant examined himself and proved the allegations made in the claim petition. On behalf of respondent no. 2, registration certificate, fitness and route notification and the insurance policy of the vehicle had been filed. On behalf of the appellant the report of investigator has been filed.

7. Neither the appellant nor the respondent no. 2 has produced any oral evidence before the Commissioner.

8. The Commissioner relying upon the statement of the claimant as well as the documentary evidence produced by the claimant came to the conclusion that respondent no. 1 received injuries during the course of employment with respondent no. 2. The disability certificate produced established 40 percent physical disability suffered by the claimant. It was found that claimant suffered 18 percent loss in the earning capacity. The Commissioner further found that under the contract the claimant was getting Rs. 1.20 per km. , and as the claimant had stated that he was driving vehicle for more than 300 km. per day, the monthly salary of the claimant has been fixed at Rs. 10,800/ out of which 18 percent loss of income has been assessed and according to provisions of Employees Compensation Act, total loss of income was assessed to Rs. 1,93,960/. On the basis of vouchers produced by the claimant medical expenses of Rs. 21, 813/ has been assessed towards the medical expenses. Accordingly, total compensation of Rs. 2,15,773/ has been awarded.

9. Counsel for the appellant submits that there is no evidence relating to the income of the claimant and the Workman Compensation Commissioner has illegally presumed, the income of the claimant as Rs. 10,800/ per month.

10. The claimant was an employee of M/s. Uttarakhand State Road Transport

Corporation on contract basis which fact was admitted by respondent no. 2 and under the contract he was getting Rs. 1.20 per km. The claimant had stated that he was driving the vehicle daily for more than 300 kms., this evidence of the claimant has not been denied either by the appellant or respondent no. 2. Thus the evidence of the appellant qua his income remained unrebutted before the Commissioner. Accordingly, the Commissioner has taken minimum 300 kms. per day and assessed the income of the claimant at Rs. 360/ per day. Since there is neither any counter version on behalf of the appellant or on behalf of the respondent no. 2 nor any evidence in rebuttal has been produced, we see no illegality in the finding of the Commissioner in this respect. The finding in respect of the monthly wage of the claimant is a finding of fact and is based upon material evidence on record. It cannot be said that the finding is perverse .

11. Counsel for the appellant then submitted that the owner and driver of truck no. UP 2T 2443, i.e. offending vehicle had not been impleaded in the claim petition as such the claim petition was not maintainable.

12. This claim petition was filed under the provisions of Employees Compensation Act, 1923. Under this Act, the claim petition is maintained against the employer by the employee for the injuries sustained during the course of the employment. Under the provisions of the Act, the employer is bound to pay compensation and joint tortfeasors are neither necessary nor proper party in this proceeding. Accordingly, there is no merit in this argument of the counsel for the appellant.

13. Judgment of the Workmen Compensation Commissioner is based upon appraisal of the evidence on record and no substantial question of law is involved in this appeal. Accordingly, the appeal has no merit and is liable to be dismissed.

14. The appeal is dismissed.