
(2016) 03 GAU CK 0089
In the Gauhati High Court
Case No : M.F.A. No. 89 of 2005.

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Niren Kalita and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 19, 30, 4(c) (ii)

Citation : (2017) AAC 234 : (2016) 4 ACC 3 : (2016) 2 AnWR 606 : (2016) 149 FLR 843 : (2016) 4 GauLJ 237 : (2016) 4 GauLR 352 : (2016) 3 GauLT 101 : (2016) LabLR 857 : (2016) 3 LLN 621 : (2016) 3 TAC 408

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : S.K. Goswami, Advocate, for the Appellant; None for the Respondent, for the Respondent

Final Decision : Disposed off

Judgement

Suman Shyam, J. (Oral) - Heard Mr. S.K. Goswami, learned counsel for the appellant none appears for the respondent.

2. This appeal is directed against the judgment and order dated 08-07-2005 passed by the learned Commissioner, Workmen's Compensation, Dhubri in connection with W.C. Case No. 23/2000 awarding a sum of Rs. 1,70,260/- along with interest @ 9% per annum from the date of the accident totalling to Rs. 2,59,902/- in favour of the claimant who claimed to have suffered permanent disability on account of motor accident that took place on 17-12-1999.

3. The case of the claimant, in brief, is that he used to work as a conductor in the vehicle bearing number AMZ-1168 (bus) owned by one Shri Jogendra Kumar Basumatary. On 17-12-1999 the said vehicle met with an accident at Hazaripara under Lakhigonj Police Out Post, as a result of which, the claimant had suffered grievous injuries on his person. It has been claimed that in the aforesaid accident the claimant had sustained injuries in cervical spine, theomarc injuries, scalf internal injuries, injuries in the right side of the chest, backbone, collar bone and

in the right hand index finger, thereby causing enormous difficulty to the claimant to continue with his profession. The claimant was treated at the Dibrugarh Civil Hospital and also at Guwahati and was advised by the Doctor to take physiotherapy and rehabilitation therapy since he has become permanently disabled.

4. While deciding the aforesaid claim petition the learned Commissioner had framed four issues. The issue Nos. 3 and 4 are relevant for the purpose of disposal of the appeal and hence, the same are quoted herein below for ready reference:

"3. Whether the Opposite Parties are liable to pay compensation as claimed by the claimant petitioner?

4. If yes, what relief is the claimant petitioner entitled to?"

5. Since the decision of the Commissioner on the remaining issues are inconsequential for the purpose of deciding the appeal, the findings and conclusions in respect thereof are not discussed herein.

6. In respect of issue No. 4, the learned Commissioner had recorded the following finding:

"Issue No. 4:-

This is a case of personal injuries caused to Shri Niren Kalita, Conductor of the said vehicle and the petitioner is entitled to compensation on the following heads:

Although no amputation was done and the injuries are not specified in the Schedule which attract Section 4(c)(ii) of the W.C. Act. In the present case except the Medical Certificates no other material are found available before the commissioner to indicate the percentage of physical disability as the Doctor failed to give their evidence. So, the Commissioner is to apply judicial mind to fix the percentage of disability and the loss of earning capacity as empowered U/S 19 of the Act. So, on the basis of the relevant documents pertaining to the injuries sustained by the petitioner with reference to the Injury Certificates issued by the physician and the Orthopedic Surgeon, it appeared that the petitioner got multiple injuries as a result he required to go for long treatment. So definitely due to his physical inability the petitioner could not perform his own duty which reduced his earning capacity. Considering whole factors the court is decided to fix 40% disability and the same has been decided by taking in to consideration of genuinity, relevant factors and justice."

7. Mr. Goswami, learned counsel for the appellant submits that law is well settled that in a case of non-schedule injury under the Workmen's Compensation Act, 1923 the Commissioner cannot make assessment of permanent disability and loss of earning capacity dehorse the evidence of a qualified medical practitioner. In support of his argument, Mr. Goswami has also cited a decision of this Court rendered in the case of New India Assurance Co. Ltd. v. Sanjit Kumar and Anr.

reported in 2000 (2) GLT 567. However, notwithstanding the same, submits Mr. Goswami, the learned Commissioner has himself assessed the permanent disability of the claimant to be 40% despite having noted that there was no evidence from the Doctor to substantiate the said claim.

8. I have considered the submission made by the learned counsel for the appellant and have also perused the impugned judgment and award. Section 4(c) (ii) of the Workmen's Compensation Act, 1923 provides that in a case of injury not specified in schedule-1, the percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity can be made as per the assessment made by a qualified medical practitioner.

9. In the case of New India Assurance Co. Ltd. (Supra) this Court had observed as follows in paragraph 4:

"(4) The Workmen's Compensation Act provides the mode and method to determine the compensation. The Court cannot adopt some mode or method which is not provided in the Act. In the portion of the award quoted above, the Court determined the percentage of loss of earning capacity at 50%. That power is not available with the Commissioner. So, this award shall stand quashed and the matter now shall go back to the commissioner to assess the compensation afresh and in order to do that, he may even ask the doctor to appear before him and give his opinion with regard to percentage of loss of earning capacity."

10. The aforesaid decision of this Court had also been followed and the law reiterated in a number of subsequent decisions of this Court on the same point.

11. As would be apparent from the record, in the present case, there was no evidence of a qualified medical practitioner to establish that the claimant had suffered any permanent disability either partial or total, on account of the accident in question. Such being the position, the learned Commissioner did have the jurisdiction to exercise powers under Section 19 of the Workmen's Compensation Act, 1923 and fix the permanent disability @ 40% on his own.

12. Since the compensation has been awarded on the basis of a finding of disability recorded by the learned Commissioner in the impugned order in total contravention of the provisions of the Act of 1923, hence, the same cannot be sustained in the eye of law. The impugned order is accordingly set aside. However, having regard to the overall facts and circumstance of the case, I am of the opinion that the present is a fit case where the matter should be remanded back to the Commissioner, Workmen's Compensation for a fresh decision in the matter based on evidence from the qualified medical practitioner so as to decide the question of permanent disability, if any, suffered by the claimant. It is ordered accordingly.

13. At this stage, Mr. Goswami, learned counsel for the appellant submits that in terms of the impugned award, the insurance company has already deposited the entire amount out of which 50% has also been released in favour of the claimant

as per the direction of this Court. The learned counsel, therefore, seeks order from this Court protecting the interest of the appellant in the aforesaid matter.

14. Since the claim petition has been remanded for fresh decision, hence, it is needless to say that the amount deposited by the insurance company will be subject to further order(s) that may be passed afresh in the claim petition by the learned Commissioner, Workmen's Compensation, Dhubri.

15. It is, however, made clear that regardless of the outcome of the claim petition, the 50% of the amount stated to have been already released in favour of the claimant shall not be recovered from him by the insurance company. With the above, observation this appeal stands disposed of.

16. Send back the LCR.