
(1998) 04 OHC CK 0017
In the Orissa High Court
Case No : M.A. No. 547 of 1994

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Radhey Shyam Naik and Others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Citation : (1999) 3 LLJ 934

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : K.B. Vohra, R.B. Mohapatra, R.S. Chinmanks, T.K. Nayak and N.R. Routray, for the Appellant; J.K. Tripathy, S.N. Mishra, P.K. Chand, B.P. Tripathy, D. Satpathy and A. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—This is an appeal by the Insurer M/s. Oriental Insurance Company Ltd., Jeypore against the award of the Commissioner for Workmen's Compensation and Deputy Labour Commissioner, Jeypore saddling the liability on the appellant to pay the compensation amounting to Rs. 31,197/- within 30 days of receipt of the judgment and in default to pay a penalty of Rs. 10,000/- with interest at the rate of 6 % per annum over and above the amount of compensation.

2. The short facts giving rise to the present appeal is that one Radhe Shyam Nayak, who was working as a Mixer Operator under M/s. Shankar Narayan Construction Co. Respondent No. 2, a contractor engaged by the Executive Engineer, T.R. Division of Upper Indravati Irrigation Project, on May 4, 1992 at 5.30 P.M. met with an accident due to which his left hand slipped into the Mixer Machine Drum sustaining injuries during the course of his employment. The workman was admitted into the Headquarters Hospital, Bhawanipatna, where he remained as indoor patient from May 4, 1992 to June 22, 1992 for treatment of the injuries. He filed a claim application before the Commissioner for Workmen's Compensation, Jeypore for indemnification of his injuries. It is the case of the

claimant that the Contractor M/s. Shankar Narayan Construction Co. had insured its workers in different trades, such as Stone Crushers, Carpenters, Earth Workers, Mechanics, Welders and Electrical Operators and as such the insurer was liable to cover the liability of the Contractor. The employer admitted the accident in his written statement and since the workmen were covered with the insurance, it prayed for impleading the Oriental Insurance Company Ltd. as a party. The appellant-Insurer appeared in the claim case and filed its written statement denying its liability, inter alia, on the ground that the injured was not covered under the above policy inasmuch as for such category of workmen, the premium was not paid. The Commissioner for Workmen's Compensation framed the following issues:

- (a) What was the age and wages of petitioner at the time of accident?
- (b) What is the loss of earning capacity of petitioner?
- (c) What is the quantum of compensation and who is liable to pay?

3. The Commissioner held that the claimant was 30 years of age and was drawing a wage at the rate of Rs. 35/- per day. He also found that the workman has lost his earning capacity to the extent of 30% on the basis of the Medical Certificate issued by the Doctor. A sum of Rs. 31,197/- was assessed and determined as the just and fair compensation.

4. Sri R.B. Mohapatra, Learned counsel appearing for the appellant contends that a Mixer Operator having not been covered under the policy issued by the Insurance Company, no liability could have been saddled against it. It is further contended that while determining the age of the claimant and the wages drawn by him, the learned Commissioner had not verified the School Leaving Certificate, Wage Bill or Muster Roll of the workman and as such the finding of the Commissioner was illegal and arbitrary. It is further submitted that the contractor, respondent No. 2 had not produced any material to show the actual wages paid to the workman or his approximate age and that the loss of earning capacity determined by the learned Tribunal being on the basis of the Medical Certificate issued by a private practitioner without directing the petitioner or the Headquarters Hospital, Bhawanipatna to issue the medical certificate, such determination is bad in law and liable to be set aside.

5. The learned Commissioner for Workmen's Compensation has found that since the employer-opp. Party No. 1 and the Executive Engineer, opp. party No. 2 have admitted that the petitioner was a workman, who met with the accident and sustained the injuries out of and in course of employment under opp. party No. 1, he is held to be a workman under the Contractor-opp. Party No. 1. So far as the determination of the age of the claimant, it appears that the Commissioner on verification of the discharge slip from the hospital marked as Ext. 1, issued by the District Headquarters Hospital, Bhawanipatna and the statement of the workman claimant found that the age of the injured was 30 years, as against the claim of the workman that his age was 20 years. It appears that no evidence was

laid on behalf of the insurer-appellant contrary to the age and wage claimed by the claimant-petitioner. In this view of the matter, I do not find any illegality or infirmity in the order of the learned Commissioner holding that the petitioner was aged about 30 years and was earning an income of Rs. 35A per day, which is also the minimum wage of any unskilled or semi-skilled workman under the Minimum Wages Act.

6. The main thrust of argument of Sri. Mohapatra for the appellant is that the claimant, a Mixer Operator, is not covered under the Insurance policy, since an operator of an electrical works is only covered. Clause 4 of the Schedule appended to the Policy reads thus :

(4) Electrical Works:

(a) Operator I No. 50 per day 7650 @ Rs.50.00

(b)Helper I No. 35 per day 279=23"

7. Undisputedly, the Mixer is operated by electrical energy. In absence of any specification and description in the policy, an electrically operated Mixer would be covered under the broad category of" electrical works", more so, when an operator of an electrical works is covered under the Insurance Policy. It is not the case of the appellant in its written statement filed before the Commissioner that a Mixer Operator was not covered under the Policy. Rather it was the specific stand in paragraph 3 of the written statement that:

"3. That this opp. party denies all about the accident alleged to have happended (sic.) on May 4, 1992 at about 5.30 P.M., while the workman was operating mixture Machine as a result his hand become totally defunct. The applicant is bound to prove not only the accident but the accident occurred in course and out of his employment."

8. Apart from the above stand, the appellant averred that, it does not admit the age and wages of the applicant, the applicant is not a workman under opp. party No. 1, contractor, the applicant and Contractor have to prove the accident, injury and that the workman was insured. In paragraph-9 of the written statement the appellant averred :

"9. That this opp. party is not liable to pay any compensation as the opp. party No.1 has not taken proper precaution before the accident of the applicant as per the Insurance policy terms and conditions."

9. A combined reading of the written statement, it is manifestly clear that the Insurer was not disputing the insurance coverage but the claim was being denied on other grounds. In that view of the matter, it has to be held that the Mixer Operator was covered under the policy and as such, the appellant-insurer is liable to indemnify the loss.

10. Now coming to the question of loss of earning capacity, it appears from Exts. 1 and 2 that the workman was treated from May 4, 1992 to June 22, 1992 in the

District Headquarters Hospital, Bhawanipatna as an indoor patient, for the crushing injuries due to the accident. A registered medical practitioner Dr. E. Panigrahy in his medical certificate, Ext. 2 has stated that the petitioner has developed loss of power of the muscles of left arm and forearm with restriction of movement of left below joint and certified that due to such disability, the loss of earning capacity is 70%. But however, on consideration of the entire materials, the learned Commissioner has come to the conclusion that the petitioner-claimant has sustained a loss of earning capacity to the extent of 30 %. In that view of the matter, I do not find any illegality in the finding of the Commissioner that the claimant had sustained a loss of earning capacity to the extent of 30%.

11. In the result, the appeal fails and dismissed as such. But however, in the circumstances, there shall be no order as to cost.