

(1997) 02 KL CK 0016
In the High Court Of Kerala
Case No : MFA No. 398 of 1996

Oriental Insurance Company Ltd.

APPELLANT

Vs

Asokan

RESPONDENT

Date of Decision : 26-02-1997

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (1998) ACJ 33 : (1997) 2 ILR (Ker) 691 : (1997) 1 KLJ 393 : (1997) 2 LLJ 546

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : Jacob Murikan, for the Appellant; Lekha Suresh, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishnan, J.—This is an appeal filed by the Oriental Insurance Company against the order dated December 20, 1995 passed by the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode in W.C. Case No. 320 of 1993. The respondent was a loading and unloading worker in Lorry KRD 2929 owned by one Basheer. On January 29, 1990 at about 11.15 A.M. while the respondent was engaged in work in the lorry, he fell down from the lorry. As a result of the accident, the respondent sustained injuries to his spine and neck. He alleged that his monthly wages was Rs. 1500/- He claimed a compensation of Rs. 1,20,00/-.

2. The respondent was examined by the Commissioner and the medical certificates produced were also perused by the Commissioner. After considering the evidence on record, the Commissioner came to the conclusion that a sum of Rs. 1,87,182/- is to be paid as compensation. It is also stipulated that the said amount is to be paid within 30 days and in default the said amount will carry simple interest at the rate of 12% per annum from the date of filing of the application.

3. In the appeal, preferred by the Insurance Company, it is alleged that the Commissioner was not justified in holding that there was total disablement as the medical certificate (Ext.A9) showed only disability to the extent of 55%. It was also alleged that the Commissioner erred in calculating the compensation payable to the respondent on the basis of the amended provision of Section 4 of the Workmen's Compensation Act. According to the appellant, the compensation payable to the respondent should have been fixed on the basis of the unamended provisions of Section 4 of the Act, as the accident occurred on January 29, 1990 and the Workmen's Compensation (Amendment) Act, 1995 (Act 30 of 1995) came into effect only on September 15, 1995.

4. We heard counsel for the appellant as also counsel for the respondent.

5. As regards the percentage of disability, there cannot be any dispute because the matter was referred to the Medical Board attached to the District Hospital, Kozhikode and a Certificate dated January 28, 1997 has been issued by the Medical Board. In the report, it is stated that the respondent is having old cervical spine injury with quadreparesis and the loss of earning capacity as a loading and unloading worker is 100%. In view of the Certificate issued by the Medical Board, we hold that the permanent disability of the respondent is hundred percent and the Commissioner was justified in assessing the disability at 100%.

6. The next question that arises for consideration is whether the respondent is entitled to get compensation on the basis of the amended Act or on the basis of the law that was in force as on January 29, 1990, the date of the accident.

7. A Division Bench of this Court considered this question in *Oriental Insurance Co. Ltd. v. Majeed* 1996 (2) KLT 1022. It was held that Sections 4 and 5 of the Amending Act came into force on September 15, 1995 and therefore, they have no retrospective effect from a date prior to September 15, 1995. It was also held that the liability to pay compensation accrued on the date of the accident and that the law as on the date of the accident shall be applied in computing the quantum of compensation. Counsel for the respondent has brought to our notice a decision of the Supreme Court in Civil Appeal Nos. 16904-16909 of 1996 dated November 6, 1996. That was a case where the workmen were drawing wages at the rate of Rs. 1800 per month. The Insurance Company contended that the compensation should be fixed on the basis of the income of the workers at Rs. 1000/- per month. It was argued that the law operating on the date was applicable and as such the heirs of the workmen were not entitled to the benefit of the amendment. But, this plea was rejected by the Honourable Supreme Court in the following manner:

"We are finally determining the rights of the workmen today. The Act is a special legislation for the benefit of the labour. Keeping in view the scheme of the Act we are of the view that the only interpretation which can be given to the amendment is that if any benefit is conferred on the workman and the said

benefit is available on the date when the case is finally adjudicated, the said benefit should be extended to the workmen. We, therefore, hold that the compensation to be paid to the heirs of the workmen has to be calculated on the basis of the actual wages-Rs. 1800/- drawn by them."

From the above dictum laid by the Supreme Court, it can be assumed that the decision of this Court in Oriental Insurance Co. Ltd. case(supra) is impliedly overruled. So, the award passed by the Commissioner for Workmen's Compensation applying the amended Act is just and proper. Hence, the arguments advanced by the appellant's counsel on this ground is rejected.

8. In the result, the appeal is without merit. It is dismissed. The balance amount deposited by the appellant may be disbursed to the respondent.