
(1993) 08 GAU CK 0036
In the Gauhati High Court
Case No : M.A. (F) 27 of 1993

Oriental Insurance Company Ltd.

APPELLANT

Vs

Shri Anil Chandra Das and Others

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149
Workmens Compensation Act, 1923 — Section 30

Citation : (1996) 1 LLJ 1123

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : S. Dutta, B.K. Jain, for the Appellant; C. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This appeal is directed against the judgment passed in W.C. Case No. 18/91 by the Commissioner-cum-Addl. Deputy Commissioner, Guwahati for Workmen's Compensation Act, 1923, for short the Act.

2. Appeal has been filed by the Insurance Company being aggrieved by the above order. As the point involved is short, it was decided that the appeal will be disposed of at the admission stage. Learned counsel for the appellant as well as for the respondent workman appeared and they were heard at length.

3. A petition was filed by the respondent No. 1 Anil Ch. Das before the Commissioner claiming compensation under the Act. The petitioner was engaged as a driver by the owner of the Truck No. AMU-2737 and the truck met with an accident on July 23, 1991 on Rangia Bhutan Road under Rangia Police Station. The truck was duly insured by the appellant. The learned Commissioner held that the petitioner was permanently disabled on the basis of the medical report and as he was aged 26 years and was drawing a salary of Rs. 1000/- per month, a sum of Rs. 53,970/- was awarded against the Insurance company. Hence, the present appeal.

4. First point urged on behalf of the respondent is that the Insurance Company cannot file an appeal against the amount of compensation in view of the provisions contained in Motor Vehicles Act, 1988, more particularly Sections 147 and 149. According to learned Counsel, Motor Vehicles Act, 1988 has to be read together with the provisions of the Act in question. In this connection, Learned Counsel has placed reliance on a decision of the Kerala High Court in *New India Assurance Co. Ltd. Vs. M. Jayarama Naik and Another*. It may be stated that learned counsel has made the submission not only on the basis of provisions of Motor Vehicles Act, 1988, but in view of the recent full Court decision of this Court wherein it was *inter alia*, held that the Insurance Company against the award of the motor accidents Claims Tribunal can file an appeal only on the limited grounds as mentioned in the said Act and cannot challenge the quantum of compensation.

5. From the decision of the Kerala High Court in *M. Jayarama Nayak (supra)* I find that there was an accident between the two vehicles. But in this case from the impugned judgment I do not find any such accident. That apart in that case, Section 96(2) of the old Motor Vehicles Act, 1939 was considered and this question whether both the acts have to be read together did not come up for decision. Therefore on this point the above decision is not helpful for the respondent.

6. According to learned counsel for the appellant the impugned judgment is not a judgment at all, inasmuch as, it is not only violative of the principle of natural justice, but is also against the provision of the Act. In this connection, the learned Counsel has submitted from the copies of the order sheet maintained in this case by the Commissioner and has urged that the appellant was never given a chance to adduce evidence and on the basis of the medical report, the entire judgment was passed.

7. I have perused the judgment and I find that on the basis of the medical report, the Commissioner came to the finding that there was a permanent disablement. The medical report of the medical board under the Chief Medical and Health Officer, Kamrup at Guwahati dated September 29, 1991 runs as follows:

"This is to certify that the District Medical Board, Kamrup which sat on September 29, 1991 clinically examined Sri Anil Ch: Das of Bilpar on his person besides viewing the X-ray of the affected part (exposed on September 29, 1991) and the Board is of opinion that Shri Das had fracture of right tibia in upper third which is still not united needs a surgical management (Open reduction) and avoidance of driving motor vehicles till his complete recovery is advisable."

8. On the basis of the above report, the above amount was awarded on the ground of permanent disablement. The Commissioner did not consider the report at all vis-a-vis Schedule I to the Act. On the top of that from the order-sheet as submitted by the learned counsel for the appellant would show that no

opportunity was given whatsoever to the parties to adduce evidence. Therefore, the above judgment is not a judgment at all and non est in the eye of law.

9. Learned counsel for the respondent-workman has urged that as the amount has not been deposited by the appellant as provided u/s 30 of the Act, the appeal is not at all maintainable. If I go strictly by the Act, the contention of learned counsel for the respondent has definite force. But in the case in hand as the impugned judgment was passed in complete disregard to the principal of natural justice, inasmuch as, no opportunity was given to the parties to adduce evidence, and was also passed in complete violation of the provisions of the Act in coming to the conclusion that there was a permanent disablement as stated above, this is not a judgment at all and it is a fit case for exercising power of Superintendent under Article 227 of the Constitution. I further state that the finding of the court below is absolutely perverse as medical evidence is contrary to the above finding.

10. With exercising powers under Article 227 of the Constitution, the question of payment as per Section 30 of the Act cannot arise as this Court has to keep the Subordinate Tribunal within its jurisdiction and has to ensure that such Tribunal acts within the ambit of law. Therefore, in the interest of justice on the ground of non-compliance of Section 30 of the Act, the appeal cannot be dismissed.

11. As this case relates to workman, I am of the opinion that some interim relief has to be granted. I therefore, direct the Insurance Company to immediately deposit and positively within a period of 6 weeks a sum of Rs. 7,000/-before the Commissioner who shall disburse the amount to the workman as an interim relief and thereafter the matter shall be disposed of as early as possible. I further direct both the parties to appear before the Commissioner-cum-Addl. Deputy Commissioner, Guwahati in the week commencing from 6th September for obtaining necessary orders. On such appearance, the Commissioner shall fix a date for recording evidence and thereafter proceed to decide the dispute in accordance with law as early as possible.

With the above direction and observation, the appeal is allowed. No costs.