
(2011) 09 AHC CK 0391

In the Allahabad High Court

Case No : First Appeal From Order No. 3007 of 2011

Reliance General Insurance Company Ltd.

APPELLANT

Vs

Devendra Singh Bhadauriya and Another

RESPONDENT

Date of Decision : 03-09-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2011) 09 AHC CK 0391

Hon'ble Judges : Yogesh Chandra Gupta, J; Satya Poot Mehrotra, J

Bench : Division Bench

Judgement

1. It is submitted by Shri S.K. Mehrotra, learned Counsel for the Appellant that as per the Medical Certificate brought on record before the Workmen's Compensation Commissioner, the claimant-Respondent No. 1 sustained non-scheduled injuries, and the extent of disability was 50%.

2. The Medical Certificate was silent as regards the extent of loss of earning capacity, as a result of the disability sustained by the claimant-Respondent No. 1. It is submitted that as per the provisions contained in Item (ii) of Clause (c) of Sub-section (1) of Section 4 of the Workmen's Compensation Act, 1923 read with Explanation II to the said Clause (c), the loss of earning capacity should be assessed by a qualified Medical Practitioner in case of non-scheduled injuries. There being No. such assessment in the present case, the submission proceeds, the Workmen's Compensation Commissioner erred in law in assessing the extent of loss of earning capacity as 70%, which was contrary to the aforesaid provisions of the Workmen's Compensation Act, 1923.

3. Shri S.K. Mehrotra has placed reliance on the decision of the Supreme Court in National Insurance Company Ltd. v. Mubasir Ahmad and Anr. 2007 (2) T.A.C.3 (S.C.).

4. It is further submitted by Shri S.K. Mehrotra, learned Counsel for the Appellant that the Workmen's Compensation Commissioner framed Issue No. 3,

namely, whether the Driver of the vehicle in question (i.e. the claimant-Respondent No. 1) was not having valid Driving Licence at the time of the accident in question, and if yes, the result thereof.

5. However, the Workmen's Compensation Commissioner has neither discussed the said issue nor has recorded any finding in respect thereof.

6. Having considered the submissions made by Shri S.K. Mehrotra, learned Counsel for the Appellant, we are prima-facie satisfied that the following Substantial Questions of Law are involved in the present Appeal:

(1) Whether on the facts and in the circumstances of the case and keeping in view the fact that the Medical Certificate brought on record was silent as regards the extent of loss of earning capacity and also keeping in view the provisions contained in Item (ii) of Clause (c) of Sub-section (1) of Section 4 of the Workmen's Compensation Act, 1923 read with Explanation II to the said Clause (c), the Workmen's Compensation Commissioner was justified in law in assessing the extent of loss of earning capacity as 70% and in awarding compensation on the basis of such assessment?

(2) Whether having framed Issue No. 3 regarding factum of the valid Driving Licence in respect of the claimant-Respondent No. 1, the Workmen's Compensation Commissioner erred in law in not deciding the said Issue?

7. Admit.

8. Issue notice.

9. Notice will be issued to the Respondents by Registered Post A.D. fixing the next date fixed in the matter.

Order on Stay Application

10. Issue notice.

11. Notice will be issued to the Respondents by Registered Post A.D. fixing the next date fixed in the matter.

12. Requisite steps will be taken within three weeks.

13. Heard on the question of grant of interim relief.

14. The amount awarded under the impugned judgment and Order dated 7.7.2011 has already been deposited by the Appellant as is evident from the Certificate filed with the Memorandum of Appeal.

15. Having regard to the facts and circumstances of the case and having considered the submissions made by Shri S.K. Mehrotra, learned Counsel for the Appellant, it is directed that the operation of the impugned judgment and Order dated 7.7.2011 will remain stayed until further orders of the Court subject to the following terms and conditions:

(1) 50% of the amount deposited, as mentioned above, will be paid to the claimant-Respondent No. 1 without furnishing any security.

(2) Balance 50% of the amount of the deposit, as mentioned above, will be invested in maximum interest-bearing Fixed Deposit in a Nationalized Bank, renewable from time to time, in the name of the claimant-Respondent No. 1.

16. The amount invested in Fixed Deposit as per the directions given above, will not be permitted to be withdrawn by the claimant-Respondent No. 1 without leave of this Court. However, 50% of the periodical interest accruing on such Fixed Deposit will be permitted to be withdrawn by the claimant-Respondent No. 1, as and when the same accrues. Balance 50% of the periodical interest accruing on such Fixed Deposit, will continue to be reinvested in such Fixed Deposit.

17. Counter Affidavit and Rejoinder Affidavit may be exchanged between the parties by the next date fixed in the matter.