

(2017) 02 MAN CK 0024
In the Manipur High Court
Case No : 15 of 2008

The National Insurance Company Ltd.

APPELLANT

Vs

Md. Ameruddin, s/o Late Jamaruddin, & Anr.

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

[Workmens Compensation Act, 1923](#), [Section 3\(1\)](#), [Section 4](#), [Section 4A](#), [Section 4\(1\)\(c\)](#), [Section 2\(1\)\(n\)](#) - Employers liability for compensation - Amount of compensation - Compensation to be paid when due and penalty for default - Amount of compensation - Definitions
[Motor Vehicles Act, 1988](#), [Section 147\(1\)](#) - [Section 147\(1\)](#) - Requirements of policies and limits of liability

Citation : (2017) 02 MAN CK 0024

Hon'ble Judges : Kh. Nobin Singh

Bench : Single Bench

Advocate : A. Deni Sharma, S. Jibon

Judgement

1. Heard Shri A. Deni Sharma, the learned counsel appearing for the appellant; Shri S. Jibon, the learned counsel appearing for the respondent No. 1 and none is present for the respondent No. 2.

2. This appeal is directed against the award dated 22-12-2007 passed by the learned Commissioner, Workmen's Compensation, Manipur in Claim Case No. 15 of 2006 by which the respondent No. 2 was held liable under Section 3(1) of the Act to pay compensation for the personal injury to the respondent No. 1; the appellant was further held liable to indemnify the respondent No. 2 and accordingly, the appellant was directed to deposit the amount of compensation for a sum of Rs. 4,14,048/- (Rupees four lakhs fourteen thousand and forty eight) only on or before 31-01-2008 failing which with its simple interest @ 12 percent per annum.

3. The respondent No. 1 was a Driver by occupation employed by the respondent

No. 2, a registered owner of the vehicle (Tata Sumo) bearing registration No. MN04/5433 and he was receiving the monthly wages @ Rs. 6400/- per month. The appellant was the insurer of the respondent No. 2 under Section 147(1) of the Motor Vehicle Act, 1988 during the period from 08-04-2002 to 07-04-2003. An accident took place on 11-04-2002 wherein the respondent No. 1 sustained injury, because of which he filed a claim before the Presiding Officer, Manipur Accident Claim Tribunal, Manipur which he withdrew on 26-05-2006 with the permission of the Presiding Officer allowing him for filing a fresh claim before the Commissioner for Workmen's Compensation. The respondent No. 1 adduced oral evidence in support of his claim that he was a Driver employed by the respondent No. 2 and the occurrence of the accident was not disputed by the respondent No. 2 except challenging the amount of compensation claimed by the respondent No. 1. After having considered the records and arguments of the parties, the learned Commissioner held that the respondent No. 1 was a workman as defined under Section 2(l)(n) of the said Act read with Item (i) of the Schedule II of the said Act and that the accident to the respondent No. 1 occurred during the course of the respondent No.1's employment by the respondent No. 2.

4. Agreeing with the opinion given by the medical practitioner that the respondent No. 1 was no longer fit to drive motor vehicle, the Commissioner was of the view that the applicant became permanent total disablement as defined under Section 2(i)(n) of the said act for the purpose of payment of compensation under Section 4 of the Act and accordingly held that the amount of compensation payable to the respondent No.1 was Rs. 4,14,048/- only and not Rs. 5,44,000/- as claimed by him. The respondent No. 2 was held liable under Section 3(I) of the said Act to pay compensation for the personal injury sustained by the respondent No. 1. In view of the provisions of Section 147(1) of the Motor Vehicle Act, 1988, it was further held that the appellant was liable to indemnify the respondent No. 2 towards the payment of compensation.

5. Being aggrieved by the said award, the appellant preferred the present appeal against it on various grounds as detailed in para 2 of the Memo of Appeal. However, during the course of hearing, Shri A. Deni Sharma, the learned counsel appearing for the appellant did confine his argument only in respect of one ground contending inter-alia that the Commissioner erred in as much as he violated the provisions of Section 4(1)(c) of the Workmen's Compensation Act, 1923 as amended as regards the statutory requirement for making assessment on loss of earning capacity, suffered by the Workman, by a qualified Medical Practitioner. It is further submitted that the Medical Practitioner did not state on deposition nor had the respondent No. 2 adduced any evidence to establish that the workman had become incapacitated for and incapable of all works which he was capable of performing before the accident. It is further submitted that the Commissioner erred in making assessment of the loss of earning capacity without any assistance being given by a qualified Medical Practitioner. In support of his contention, he has relied upon the judgment and order dated 27-04-2009

passed by the Hon''ble Gauhati High Court in MFA No. 4 and 5 of 2007 wherein, the Hon''ble High Court held - "7. So far as the necessity of examining a qualified medical officer to ascertain the percentage of loss of earning capacity, this Court in a catena of decisions consistently held that the percentage of disability is a different thing and the percentage of loss of earning capacity is another thing and that the loss of earning capacity is to be assessed on the basis of sound medical principle and such assessment is to be carried out by qualified medical practitioner. In view of the provisions of Section 4(1)(c)(ii) of the Workmen's Compensation Act, the loss of earning capacity of any disabled persons resulted out a vehicular accident has to be assessed by a qualified medical practitioner. Admittedly, in the instant cases, the Commissioner assessed the loss of earning capacity of the driver and handyman without taking the assistance of a qualified doctor, which is against the provision of law. On this count, the impugned Judgment and Awards are liable to be remanded to re-assess the loss of earning capacity of the driver and handyman after examining a qualified or concerned doctor. The Commissioner shall give reasonable opportunity to the claimants (driver and handyman) to adduce medical evidence in that regard. The Commissioner is directed to assess the compensation afresh on the basis of the medical assessment to be made by a qualified doctor regarding the loss of earning capacity of the claimants. The entire process shall be completed within a period of 2 (two) months from the date of receipt of a copy of this order.

On the other hand, Shri S. Jibon, the learned counsel appearing for the respondent No. 1 has relied upon the decisions rendered by this court in National Insurance Co. Ltd. Voipukhongsai & anr., reported in 2016 (2) TAC 281 (Mani.) and by the Hon''ble Supreme Court in Pratap Narain Singh Deo Vs. Srinivas Sabata & anr., reported in 1976 (2) SCR 872. He has placed further reliance on the decision rendered by the Hon''ble Gauhati High Court in New India Insurance Company Ltd. Vs. Madam Sahu & anr., reported in 2008 (1) TSC 394 (Gau.) wherein the Hon''ble court emphasised the principle that while determining the extent of earning capacity, what has to be determined is as to what work the workman was doing at the time when the accident took place, and what is the effect of the injuries sustained by him. The Hon''ble Guahati High Court has held that loss of earning capacity, in the light of the provisions of Section 4-A of the Workmen's Compensation Act, has to be determined by the registered medical practitioner.

Having heard the learned counsels appearing for the parties, this court is of the view that the issue involved herein is squarely covered by the said decision rendered in MFA No. 4 & 5 of 2007 referred to herein above. The decision rendered in New India Insurance Company Ltd. Vs. Madam Sahu & anr. (supra) also appears to have supported the case of the appellant as regards the issue involved herein. The other two decisions relied upon by the learned counsel appearing for the respondent No. 1 are not applicable to the facts of the present case and therefore, the same are not being referred to herein. Moreover, the respondent No. 2, despite notice having been duly served upon him, has chosen

not to contest the present appeal.

6. In view of the above, the appeal is allowed and consequently, the impugned award is set aside with the direction that the case be remitted to the Commissioner to assess the compensation afresh on the basis of the medical assessment given by a qualified medical doctor. Since the incident took place a decade's ago, the Commissioner is expected to pass the award at the earliest possible, preferably within two months from today, after giving the parties opportunities of being heard.