

(2016) 04 MAN CK 0002
In the Manipur High Court
Case No : M.F.A. No. 19 of 2008.

The National Insurance Company Ltd. having its Registered Office and Head Office at 3. Middleton Street Kolkata and its Regional Office at G.S. Road, Bhangagarh, Guwahati and represented by the Divisional Manager, Divisional Office at Imphal, Thangal Baz

Date of Decision : 28-04-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1) (1), 30, 4(1) (b), 4-A

Citation : (2016) 3 ACC 218 : (2017) ACJ 733 : (2016) 149 FLR 901 : (2016) 6 GauLJ 71 : (2016) 4 GauLT 869 : (2016) LabLR 895 : (2017) 1 NEJ 304 : (2016) 2 TAC 781

Hon'ble Judges : S. Serto, J.

Bench : Single Bench

Advocate : A. Deni Sharma, Advocate, for the Appellant; S. Jibon Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Serto, J. - Heard Mr. A. Deni Sharma, learned counsel appearing for the appellant and Mr. S. Jibon Singh, learned counsel appearing for the respondent No.1.

2. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter called the Act) against the award dated 21.08.2007 passed by the Commissioner for Workmen's Compensation, Manipur in Claim Case No. 09 of 2005 awarding a sum of Rs. 4,54,511/- (Rupees four lakh fifty four thousand five hundred and eleven) as compensation in favour of the respondent No. 1 with an interest @ 12% per annum from the date of the accident i.e. 24.02.2005.

3. As found in the record of the Claim Case W.C. No. 09 of 2005 of the Commissioner for Workmen's Compensation, Manipur, and as submitted by the learned counsels of the parties the facts and circumstances which led the Commissioner passed the award dated 21.08.2007 in the Claim Case W.C. No. 09 of 2005 are as follows :

The respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) was employed as second driver by one, Shri Ng. Saratchandra Singh, a permanent resident of Singjamei Chingamakha Meisnam Leikai, who is Respondent No. 2 in this case, for his bus bearing Registration No. MN-01-0756 for a monthly salary of Rs. 3,500/- (Rupees three thousand and five hundred) only. On 24.02.2015, while the bus was on its way from Moreh to Imphaland reached a place near Sora Junior High School in Thoubal District along National Highway No. 39, an unknown miscreant threw a bomb inside it and the bomb exploded there and then causing injury to the respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) and the conductor of the bus. Immediately after the incident, the respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) was taken to RIMS Hospital at Imphal and he was found to have suffered from the following injuries :

(i) Blunt injury over the right shoulder joint (2 x 2 cm).

(ii) Lacerated wound over the 2 (two) arms and other bodily injuries.

An F.I.R. being No. 16(2)05 KPS u/s 307/326/427/34 IPC ? 25(1-C) A. Act was registered by the Kakching Police Station in connection with the said incident.

After being treated in the RIMS hospital at Imphal, the respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) was discharged on 01.03.2015 and the doctor who treated him issued a certificate stating as follows :

"This is to certify that Mr. Vaipu Khongsai aged about 26 years S/o, Angam Khongsai of Sugnu, Manipur is suffering from right upper limb paralysis due to bomb blast injury on 24.02.2015. He is not fit for a driver of heavy vehicles for whole of his life."

Following the incident and the permanent disablement, he suffered due to the same, he was discharged from his employment by his employer/respondent No. 2. Since he suffered the disability during the course of his employment, the respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) asked his employer/respondent No. 2 (opposite party No. 1 in the Claim Case W.C. No. 09 of 2005) to compensate him for the loss he suffered. But he was told that the compensation claimed by him can only be given if the Insurance Company (the appellant in this case) indemnifies the same. Having no choice, the respondent No. 1 (petitioner in Claim Case W.C. No. 09 of 2005) filed a petition before the Commissioner for Workmen's Compensation, Manipur claiming compensation under the Act from both his employer and the Insurance Company (appellant in this case) with whom the former had insurance policy in connection with the bus being policy No. 202000/31/03/6303184.

4. In support of his claim, the respondent No. 1 (petitioner in the Claim Case No. 09 of 2005) produced and examined 4 (four) witnesses namely :

(i) Voipu Khongsai, the respondent No. 1 (petitioner in the Claim Case W.C. No. 09 of 2005) himself.

(ii) Shri Naorem Krishnamohon Singh, driver of the bus, registration No. MN-01-0756 in which the incident of bomb blast took place.

(iii) Dr. Laikhuram Basantakumar Singh, Senior Registrar, Department of Medicine, RIMS who treated the respondent No. 1 (petitioner in the Claim Case W.C. No. 09 of 2005).

(iv) Ngairangbam Saratchandra Singh (respondent No. 2), owner of the bus being registration No. MN ? 01 -0756 in which the incident took place.

5. The respondent No. 1 (petitioner in the Claim Case W.C. No. 09 of 2005) also filed as many as 11 (eleven) documents and exhibited them as follows :

Sl. No. Documents Exhibit No.

1. Discharge slip of Mr. Voipu Khongsai issued by RIMS, Hospital. A/1

2. Appointment order dated 05.02.2003 issued by Shri Ng. Saratchandra Singh, Owner of the bus appointing Mr. Voipu Khongsai as 2nd driver. A/2

3. Termination order dated 10.03.2005 issued by Shri Ng. Saratchandra Singh, Owner of the bus terminating the service of Mr. Voipu Khongsai as 2nd driver on account of permanent disablement suffered by the later in an accident on 24.02.2005. A/3

4. Copy of FIR case No.16(2)05 KPS,U/S 307/326/427/34 IPC and 25(1-C) A.Act dated 24-2-2005 registered by Kakching P.S. in connection with the incident of bomb blast in the Bus Regd. No.B/No.MNO1/0756. A/4

5. Certificate of Insurance of Passenger Bus Carrying Commercial Vehicle being Policy No. 202000/31/03/6303184. A/5

6. Medical Certificate issued by Dr. L. Basantakumar Singh, Senior Registrar, RIMS, Imphal certifying that Mr. Voipu Khongsai is suffering from right upper limb paralysis due to bomb blast injury on 24-2-2005 and that he is not fit for a driver of heavy vehicles for whole of his life. A/6

7. Driving license of Mr. Voipu Khongsai. A/7

8. RC Book of the bus bearing No. MN01/0756. A/8

9. Route Permit of bus bearing No. MN01/0756. A/9

10. Fitness Certificate of the bus bearing No. MN01/0756 A/10

11. Wages Book showing payment of wages to the driver, Ng. Sharatchandra Singh and 2nd driver, Mr. Voipu Khongsai of the bus bearing No. MN01/0756. A/11

6. The opposite parties in the Claim Case opposed the petition of the respondent No. 1.

Opposite party No. 1, (Respondent No. 2 in this case) owner of the bus opposed

the petition only with regard to the amount claimed but admitted all the facts and circumstances stated by the respondent No. 1/applicant in support of his claim. He also submitted that the vehicle was insured along with the third party's liability, therefore, he is entitled to be indemnified by the appellant (opposite party No. 2 in that case) of the compensation amount which may be awarded to the petitioner.

7. The opposite party No. 2/appellant in this case opposed the claim of the respondent No. 1 on the followings grounds :

(i) That, respondent No. 1/applicant was not a workman employed by the opposite party No. 1, therefore, is not entitled to the claim under the Act.

(ii) That, injuries suffered by respondent No. 1/applicant were only minor injuries and his health condition was satisfactory at the time of his discharge from hospital as per the discharge slip dated 09.03.2015 issued by the RIMS, Hospital, Imphal.

(iii) That, the sum of Rs. 3,500/- (Rupees three thousand and five hundred) only claimed by the respondent No. 1/applicant as his monthly income/wage is without any basis and it is inflated claim to justify the high amount of compensation claimed by him. Therefore, compensation amount claimed by him is unreasonable and without any basis.

(iv) That, the respondent No. 1/applicant got the injuries on his body from bomb blast caused by unknown miscreants, therefore, it is the Government not insurance company who is responsible for paying the compensation. The Investigation Officer should, therefore, be produced before the Court so that he may be examined to determine who is responsible to pay the compensation.

Both the opposite parties (including the appellant) did not produce any witness or document in support of their respective case.

8. The Commissioner for Workmen's Compensation framed 5(five) issues and decided the same and gave his award dated 21.08.2007, which is challenged in this appeal. The findings as given in the award are stated in brief as follows :

(i) Whether the applicant is a workman within the meaning of the Act ?

The Commissioner came to the conclusion that the respondent No. 1/applicant is a workman as defined under the Act on the ground that his claim of being a driver employed by the opposite party No. 1/respondent No. 2 is not refuted or challenged by the later (opposite party No. 1). The Commissioner for arriving at the conclusion stated above also took into account the driving license of the applicant exhibited as Exhibit No. A/7 and the evidence given by P.W. No. 2, the driver of the vehicle who supported the claim of the applicant by stating that the applicant was employed at the time of the accident by the opposite party No. 1 as second driver by paying wages.

(ii) Whether the accident arises out of and in the course of applicant's

employment ?

The Commissioner by relying on the evidence given by P.W. No. 2 (driver of the vehicle), who was not contradicted by the opposite parties came to the conclusion that the respondent No. 1/applicant was on duty in the vehicle of the opposite party No. 1 on 24.02.2005 when the bomb blast took place inside the vehicle on the National Highway No. 39 near Sora Junior High School, Thoubal District, therefore, the accident/incident took place during the course of the applicant's/respondent No. 1's employment.

(iii) Whether the amount claimed as compensation is reasonable or not ?

The Commissioner took note of the age of the respondent No. 1/applicant who was only 25 years at the time and his monthly wages of Rs. 3,500/- (Rupees three thousand and five hundred) only which were in evidence. He also took note of the medical certificate exhibited as Exhibit No. A/6 issued by the doctor who treated the respondent No. 1/applicant and also gave statement under oath which supported the contents of the certificate issued by him. In the medical certificate the doctor had certified that ?

"This is to certify that Mr. Vaipu Khongsai aged about 26 years S/o, Angam Khongsai of Sugnu, Manipur is suffering from right upper limb paralysis due to bomb blast injury on 24.02.2015. He is not fit for a driver of heavy vehicles for whole of his life."

After having taken into account all these, the Commissioner followed the procedure provided under Section 4 of the Act and calculated the amount of compensation to be paid to the respondent No. 1/applicant as follows :

The respondent No. 1/applicant is suffering from total and permanent disablement, therefore, is entitled to the amount calculated to, 60% of the Rs. 3,500/- (his monthly wages) multiplied by Rs. 216.91/- (the relevant factor as given at Schedule IV of the Act) equal to Rs. 4,45,511/- (Rupees four lakh forty five thousand five hundred and eleven) only.

(iv) Whether the opposite party No. 1 is liable to pay the compensation ?

The Commissioner took note of the fact that the opposite parties did not deny the fact that the respondent No. 1/applicant was employed by the opposite party No. 1 in Claim Case and respondent No. 2 in this case as second driver and the accident which caused permanent disablement to the respondent No. 1/applicant happened during the course of his employment in the vehicle (Bus), which is in evidence. He also took note of the fact in evidence that the said accident happened not due to any fault attributable to the respondent No. 1/applicant. Thereafter, the Commissioner arrived at the conclusion that the opposite party No. 1 (respondent No. 2 in this case) is not entitled to the benefit of proviso to Sub Section (1) of the Section 3 of the Act and therefore, is liable to pay the compensation.

(v) Whether the opposite party No. 2/appellant is liable to indemnify the opposite party No. 1 ?

The Commissioner after being satisfied that the motor vehicle of the opposite party No 1 in which the accident took place was insured by the Insurance Company, opposite party No. 2 (appellant in this case) covering all claims of the respondent No. 1/applicant based on the insurance policy exhibited as Exhibit No. A/5 and the policy was still valid at the time of the accident, came to the conclusion that the opposite party No. 2/appellant is liable to indemnify the opposite party No. 1 for all his liabilities against the respondent No. 1/applicant.

(vi) Lastly, the Commissioner granted an interest @ 12% per annum from the date of the accident i.e. 24.02.2005 holding the opposite party No. 2 responsible for non-payment of compensation payable under Section 4(1)(d) of the Act and all provisional compensations which is payable under Section 4A(3)(a) of the Act.

9. The appellant has preferred this appeal against the award and assailed the same on the following grounds :

(i) That, the learned Commissioner for Workmen's Compensation, Manipur, erred in law as well as in facts in passing the Award dated 21.08.2007 in W.C. Case No. 09 of 2005.

(ii) That, the Commissioner erred in passing the award dated 21.08.2007 inasmuch as he has violated the provisions of Section 4(1)(b) and Section 4(1)(c) of the Workmen's Compensation Act, 1923 by not conforming to the statutory requirement of having the degree of disability and loss of earning capacity suffered by the petitioner assessed by a qualified medical practitioner.

(iii) That, the medical certificate exhibited as Exhibit A/6 on which the Commissioner relied upon did not mention that the petitioner is suffering from permanent and total disablement and the doctor who issued the same also did not mention the same in his deposition as P.W. No. 2. Therefore, the Commissioner's conclusion that the petitioner suffered from total and permanent disablement and that has resulted in loss of his earning capacity is without any basis or evidence on record. To come to such conclusion as drawn in the award the Commissioner should have first taken recourse to the provision of Section 20(3) the Workmen's Compensation Act, 1923 and take the help of a registered medical practitioner. But, since such recourse was not taken, the award deserves to be set aside.

(iv) That, the Commissioner erred in law and in fact in the assessment of the injuries and loss of earning capacity suffered by the respondent No. 1/applicant as the award was given without referring to the list of injuries given at Part 1 and 2 of Schedule 1 of the Act.

(v) That, the assessment of the Commissioner to the loss of earning capacity suffered by the respondent/applicant is grossly inflated and unreasonable as the amount of the award is disproportionate to the injuries and loss of earning

capacity suffered by the respondent No. 1/applicant.

(vi) That, the Commissioner erred in law by awarding an interest @ 12% per annum from the date of accident.

(vii) That, the Commissioner violated provision of Section 4-A(3)(a) of the Act by not asking the employer to make the payment of the award within a month from the date of award.

10. The learned counsel appearing for the appellant, however, pressed the appeal mainly on the following 3 (three) grounds :

(i) That, the Commissioner without any basis of evidence and help of a competent medical practitioner came to the conclusion that the respondent No. 1/applicant had suffered from total permanent disablement and loss of earning capacity, therefore, the same is in violation of the law.

(ii) That, the compensation amount awarded is highly inflated and unreasonable and without any basis or evidence.

(iii) That, the interest of 12% per annum awarded by the Commissioner from date of the accident is against the provisions of the Act.

11. In support of the points raised, learned counsel for the appellant submits that it is a settled law of the land that the assessment of disablement suffered by a workman and loss of earning capacity is to be done by a qualified/registered medical practitioner. The learned counsel relied upon the decisions of the Gauhati High Court in MAF No. 4 of 2007 and MAF No. 16 of 2007 reported in 2016(1) TAC 885 (Gauhati). The facts of those 2 (two) cases are different from that of the present case. In the first case, no certificate was issued by a qualified medical practitioner and no mention is also made of any medical practitioner having given evidence on the same. In the second case, except for the doctor's prescription, no certificate of a doctor on the assessment of the disablement and earning capacity suffered by the applicant was in the record and no doctor was examined. But in this case, the doctor who treated the respondent No. 1/applicant gave a certificate stating that the respondent No. 1/applicant is suffering from right upper limb paralysis due to bomb blast injury on 24.02.2015 and is not fit for driving heavy vehicle during his lifetime. Not only that, the doctor was examined as a witness and he testified that the certificate was issued by him. The doctor being a Registrar of Medicine Department of RIMS Hospital, Imphal, which is one of the premier-institutes of medical sciences is a competent medical practitioner. Since the finding of the Commissioner was based on the certificate issued by a competent Medical Practitioner of a reputed Institute of Medical Science, I find no ground or reason to interfere with the findings of the Commissioner on this point.

12. In support of the second ground of appeal, learned counsel appearing for the appellant submits that the injury and disablement suffered by the respondent No. 1/applicant is at the most partial disablement of temporary nature as defined

under Section 2(g) of the Act, since his discharge slip issued by RIMS, Hospital, Imphal exhibited as Exhibit No. A/1 stated that he has improved at the time of his discharge from hospital and his condition was satisfactory. He also submitted that the injury suffered by the respondent No. 1/applicant is not one among the injuries deemed to result in permanent total disablement as given at Schedule 1 Part I of the Act. Therefore, it cannot be concluded that he has suffered permanent and total disablement. Further, the learned counsel also referred to the age of the respondent No. 1/applicant which is only 25 years at the time of accident and submitted that there is ample chance of regaining his health in course of time. Therefore, the amount of compensation awarded by the Commissioner is highly inflated and unreasonable, the learned counsel submitted.

To this, learned counsel appearing for the respondent No. 1/applicant submitted that the disablement suffered by the respondent No. 1/applicant as per the medical certificate issued by the doctor who treated him exhibited as Exhibit No. A/6 is paralysis of right upper limb which is permanent in nature and is no longer fit for driving heavy vehicles for whole of his life, as such, he has been already discharged from his job. Therefore, disablement suffered by the respondent No. 1/applicant is as defined at Section 2(I)(I) of the Act. Thus, his entitlement of compensation was calculated as per Section 4(1)(b) of the Act. The contents of the two Sections reads as follows :

"Section 2(I)(1) :

Definition ? (1) In this Act, unless there is anything repugnant in the subject or context.

(I) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates for all work which he was capable of performing at the time of the accident resulting in such disablement.

Section 4(1)(b) :

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :-

(b) where permanent total disablement results from the injury ? an amount equal to 60% of the monthly wages of the injured multiplied by the relevant factor.

OR

an amount of Sixty thousand rupees, whichever is more."

Considering the contents of the medical certificate issued by the doctor who treated the respondent No. 1/applicant in the light of the above provision of law (Section 2 (I) (1) of the Act), it can safely be concluded that the respondent No. 1/applicant has suffered total permanent disablement since he is no longer fit for the work he was capable of performing before the accident.

Consequently, since the respondent No. 1 is found to have suffered from total disablement, he is entitled to the compensation which may be calculated as per provision of Section 4(1)(b) of the Act. The Commissioner by multiplying 60% of Rs. 3,500/- (Rupees three thousand and five hundred) only which is the monthly income of the respondent No. 1/applicant with the relevant factor related to the age of the respondent No. 1/applicant i.e. 216.91 as given in Schedule IV of the Act did not err in awarding the compensation amount given in the award. Therefore, this Court is of the view that there is no error in law in the findings arrived at by the Commissioner which warrants interference by this Court.

13. Learned counsel appearing for the appellant submitted that the Commissioner has erred in awarding the interest from the date of accident i.e. 24.02.2015 and that too at the high rate of interest i.e. 12% per annum.

The principle to be followed while awarding the interest of compensation under the Act has been settled by the Hon'ble Supreme Court in catena of cases. In *Pratap Narayan Singh Deo v. Srinivas Sabata* (1976) SC 222, the Apex Court has held that the employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in course of employment. Thus, the relevant date for determination of the compensation is the date of the accident and not date of the adjudication of the claim. This decision of the Apex Court still holds the field.

In view of the decision of the Apex Court, liability of the employer/respondent No. 2 (opposite party No. 1 in the Claim Case) to pay the compensation to the respondent No. 1/applicant in the claim case starts from the date of accident in which the respondent No. 1/applicant suffered the injuries which led to his total and permanent disablement. In the same case, the Hon'ble Supreme Court upheld the interest of 12% per annum of the compensation to be paid to the applicant/claimant. In the case of *Saberabibi Yakulb Bhai Shaikh and Others v. National Insurance Co. Ltd. and Others* reported in 2014 (1) T.A.C. 385 (S.C.) also the Hon'ble Supreme Court upheld the rate of interest to be paid on the compensation amount at 12% per annum.

It appears from all these cases that 12% per annum is the standard rate accepted for payment of interest on the compensation awarded under the Workmen's Compensation Act. Therefore, I find no reason to interfere in the decision of the Commissioner in granting interest at the rate of 12% per annum to the compensation awarded to the respondent No. 1/applicant from the date of the accident i.e. 24.02.2015.

14. For the reasons given above, the appeal is dismissed and the appellant is directed to pay the compensation along with the interest @ 12% per annum from the date of the accident i.e. 24.02.2015 within a period of 2(two) months from the date of receipt of a copy of this order. There is no order as to cost.

15. Send back the LC record.