

(2010) 10 AHC CK 0059

In the Allahabad High Court

Case No : First Appeal From Order No. 3172 of 2010

The New India Assurance Company Limited

APPELLANT

Vs

Naresh and Another

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)

Citation : (2010) 10 AHC CK 0059

Hon'ble Judges : Shyam Shankar Tiwari, J; Satya Poot Mehrotra, J

Bench : Division Bench

Judgement

Order on Appeal

1. It is submitted by Shri Manish Kumar Nigam, 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 45%.

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 ought to 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 100%, which was contrary to the aforesaid provisions of the Workmen's Compensation Act, 1923.

3. It is further submitted that the Workmen's Compensation Commissioner failed to appreciate the distinction between the extent of disability and the extent of loss of earning capacity as a result of such disability.

4. Having considered the submissions made by Shri Manish Kumar Nigam,

learned Counsel for the appellant, we are prima-facie satisfied that the following Substantial Question of Law is involved in the present Appeal:

Whether on the facts and in the circumstances of the case and keeping in view the fact that the Medical Certificate brought on record before the Workmen's Compensation Commissioner certified the extent of disability as 45% but was silent as regards the corresponding 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 100% and in awarding compensation on the basis of such assessment?

Admit.

Issue notice.

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

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

7. Requisite steps will be taken within three weeks. Heard on the question of grant of interim relief.

8. The amount awarded under the impugned Judgment and Order dated 30.8.2010 has already been deposited by the appellant as is evident from the Certificate filed with Memorandum of Appeal.

9. Having regard to the facts and circumstances of the case and having considered the submissions made by Shri Manish Kumar Nigam, learned Counsel for the appellant, it is directed that the operation of the impugned Judgment and Order dated 30.8.2010 will remain stayed until further orders of the Court subject to the following terms and conditions:

(1) Out of the amount deposited, as mentioned above, Rs. 1 lac will be paid to the claimant-respondent No. 1 without furnishing any security.

(2) Balance 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.

10. 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.

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

List on 12th May, 2011.