
(1995) 03 OHC CK 0032
In the Orissa High Court
Case No : Misc. Appeal No. 58 of 1994

The New India Assurance Company Ltd.	APPELLANT
Vs	
Birabara Nayak and Another	RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (1996) 1 OLR 207

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : R. Parija, B. Mishra and S.K. Nayak, for the Appellant; L.M. Nanda, B.P. Roy, B.B. Ray, C.N. Mohanty and A.K. Dalai, for the Respondent

Judgement

A. Pasayat, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 (in short "the Act"); challenging the correctness of the award made by the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Cuttack (in short the Commissioner). The New India Assurance Company (hereinafter referred to as insurer) has raised three points in this appeal. Firstly, it is submitted that there was no report to the police about the accident which creates grave doubt about the plea of accident as raised. Secondly, it is submitted that the evidence is so unreliable that no credence can be put to it. Thirdly, it is submitted that the Commissioner has equated physical disability with loss of earning capacity. But they are conceptually different. Therefore, it is submitted that award as made cannot be maintained. Learned counsel for the claimants on the other hand submitted that this being an appeal u/s 30 of the Act, the scope for interference is very limited and the field of operation is restricted to only substantial question of law. According to him, Commissioner has jurisdiction to make the award notwithstanding the fact that there was no report to the police, when there is material to prove the accident. It is submitted that though physical disability is different from loss of earning capacity, yet taking into consideration the nature of Injuries sustained as evident from record, and as made out by the Commissioner on personal observation,

quantum awarded cannot be said to be unreasonable.

2. Though it is an accepted fact that there was no report to the police about the accident, the Commissioner has given cogent reasons for entertaining the claim application. This being essentially a dispute relating to factual aspects, I do not consider non-information to the police to be a question involving any substantial question of law. Plea was taken that the owner of the vehicle had admitted that there was no accident. Reliance was placed on a report purported to have been filed by an Investigator of the insurer. Unfortunately the said investigator was not brought before the Commissioner to tender evidence. Several opportunities had been granted by the Commissioner. The so-called report therefore was rightly kept out of consideration by the Commissioner as the authenticity thereof had not been proved. Though it cannot be laid down as a rule of universal application that the report submitted by the investigator cannot be accepted in evidence in the absence of examination of the investigator, yet there should be a witness to speak about authenticity. That has not been done in the present case. So far as loss of earning capacity and the percentage thereof and the income aspect are concerned, they are closely interlinked. There was no dispute about the age of claimant at the time of accident. There is no doubt and in fact it has been fairly conceded by the learned counsel for the claimant that the physical disability is not same as loss of earning capacity. Normally, in such cases the course to be adopted is to remit the matter to the Commissioner for dealing with the aspect. But I find that the accident took place more than five years back. There are materials regarding nature of injuries sustained. Keeping this aspect in view, I accept the suggestion by the learned counsel for the claimant. I find that Commissioner has observed about the physical deformity and the seriousness of the injuries sustained by the claimant. There was no definite material before the Commissioner regarding the income of the claimant. On taking into consideration that the minimum wages employees engaged in vehicle get normally per month i. e., about Rs. 750/-, and loss of earning of capacity to be 25%, the amount payable to the claimant comes to (Rs. 375x205-95 (age factor) x29) Rs. 19,307.81. The amount awarded by the Commissioner is stated to have been deposited before the Commissioner. The aforesaid sum of Rs. 19,307.81 be released in favour of claimant, and the balance in favour of insurer.

The application is allowed to the extent indicated above.