(2014) 05 RAJ CK 0133

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3389/2009

The Oriental Insurance Company Ltd. APPELLANT

Vs

Om Prakash and Another RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2014) 05 RAJ CK 0133

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Amarnath Pareek, Advocate for the Appellant

Final Decision : Allowed

Judgement

Alok Sharma, J.—This misc. appeal u/s 30 of the Employee''s Compensation Act, 1923 (hereinafter ''the 1923 Act'') has been filed against the judgment dated 20-4-2009 passed by the Employee''s Compensation Commissioner, Jaipur City, Jaipur (hereinafter ''the Commissioner''), whereby the Commissioner has found the respondent-claimant (hereinafter ''the claimant'') entitled to compensation for a sum of Rs. 1,79,424/- along with interest at the rate of 12% effective the date of accident till the date of payment.

2. Heard learned counsel for the parties and perused the impugned judgment dated 20-4-2009.

3. Learned counsel for the appellant insurance company has submitted that the claimant Om Prakash, aged 35 years, who working as a driver on a salary of Rs. 4000/- per month on the vehicle No. RJ-14/GA-4032 owned by non claimant M/s. Radhika Paints House, Jaipur, and insured with the Oriental Insurance Company Ltd. On 2-6-2006 in an accident of the insured vehicle, the driver sustained injury on his leg. According to disability certificate (Ex. 7) the driver sustained permanent disability at 20%. Counsel submitted that the Commissioner has erroneously relied upon the permanent disability certificate dated 10-1-2009 (Ex.

7) as it was not proved by the doctor issuing it entering the witness box and being subjected to cross examination. It was submitted that loss of earning capacity was wrongly assessed at 40% without any expert evidence on record, more so when according to the disability certificate (for whatever its worth) permanent disability was only 20%. As such the compensation of Rs. 1,79,424/- has wrongly been awarded to the claimant.

4. No one has appeared on behalf of the claimant in spite of service of notice on the appeal.

5. The substantial question of law which arises in this appeal is as to whether the compensation for the loss of earning capacity of the claimant could be determined without any expert evidence in regard thereto being on record and more so even without proving of the disability certificate (Ex. 7) as required in law?

6. Heard. Considered.

7. Admittedly Exhibit-7, the certificate of disability was not proved as required in law by the doctor issuing it entering the witness box. Consequently there was no evidence of any probative worth before the Commissioner. More so, to determine the loss of earning capacity of the claimant at 40%, while according to permanent disability certificate the claimant sustained permanent disability of only 20%. Loss of earning capacity has to be based on expert evidence as has been held by this court in the case of National Insurance Company Vs. Jitendra Kumar, S.B. Civil Miscellaneous Appeal No. 2473/2004, decided on 21-1-2014. This being the legal position, this appeal is liable to be allowed and the case remanded to the Commissioner for re-determination of compensation.

8. The impugned judgment dated 20-4-2009 passed by the Commissioner is thus set aside. The matter is remanded to the Commissioner for determination of the claimant''s permanent disability and the loss of his earning capacity after due examination and cross-examination of the doctor who issued disability certificate or any other expert evidence as may be laid before him.

9. The claimant being from the poorer section of the Society, must have definitely expanded the amount of compensation to the extent disbursed to him. In the facts of the case, it is directed that such disbursed compensation would not be recovered from the claimant, consequent to setting aside of the judgment/ award dated 20-4-2009. The remainder amounts be returned to the appellant insurance company. Subsequent to the re-determination by the Commissioner as directed, any further amount found due to the claimant aside of amount already disbursed, shall be paid as per law by the appellant insurance company.

10. The appeal stands allowed accordingly.

