

(2017) 12 GAU CK 0038
In the Gauhati High Court
Case No : 279 of 2010

The Regional Manager, United India Insurance Co. Ltd.

APPELLANT

Vs

Sri Ranjit Das and another

RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41Rule23-A](#) -
[Workmens Compensation Act, 1923](#), [Section 30](#), [Section 4\(1\)\(c\)\(ii\)](#) - Appeals - Amount o

Citation : (2017) 12 GAU CK 0038

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : M. Dutta, N. Debnath, S. Dutta, M. Choudhury

Final Decision : partly allowed

Judgement

1. Heard Mr. M. Dutta, the learned counsel for the appellant and Mr. S. Dutta, the learned senior counsel assisted by Mrs. M. Choudhury, the learned counsel for the respondent No.2. None appears for the respondent No.1 although the name of the learned counsel is reflected in the cause-list.

2. This appeal under Section 30 of the Workmen's Compensation Act is directed against the judgment and order dated 29.07.2008 passed by the learned Commissioner, Workmen's Compensation, Kamrup, Guwahati in W.C. Case No.98/2007.

3. The appeal was admitted for hearing by the order dated 28.02.2011. The learned counsel for the appellant has submitted that only today while going through the records, he has observed that while admitting the appeal, the substantial question of law on which the appeal was required to be heard was not formulated. It is submitted that the said position had escaped his notice earlier.

4. On the basis of materials on record, the following substantial questions of law

are formulated: 1) Whether there was any admissible evidence to show permanent partial disability and, as such, whether the assessment of loss of earning capacity was rightly assessed under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923?

2) Whether the learned Commissioner was right in awarding interest on the compensation amount awarded from the date of accident?

5. The brief facts of the case is that the respondent No.1 (Ranjit Das) was an employee as a driver of the respondent No.2 (Ramejit Das) for his Maruti Car bearing No. AS-15/A-2577. The said car met with an accident on 19.05.2006 at about 9:00 AM at Sanjadi on Barpeta Daulsal Guwahati PWD Road under Hajo police station. The respondent No.1 had to suddenly apply brakes to save one by-cyclist and he fell down in a hole on the road. Due to the accident, the respondent No.1 had suffered grievous injury of fracture on his right hip joint. The respondent No.1 was immediately taken to the Hajo Hospital and on the next date he was shifted to Barpeta Civil Hospital. The X-ray examination of right hip joint was done and he was referred to Orthopaedic OPD at Guwahati Medical College Hospital but he could not take the treatment due to financial crisis and was compelled to take treatment at Barpeta Civil Hospital but he was not cured. The respondent No.1 projected that he was earning a salary of Rs.4,000/- per month. It was claimed that no notice under Section 10 of the Workmen's Compensation Act was issued to the respondent No.2 as he was aware of the accident. At the time of the accident, the offending vehicle was duly insured with the appellant.

6. The respondent No.2, the owner of the vehicle, contested the claim petition by filing written statement and admitted the employment of the respondent No.1 as his driver and also admitted that the statements made by the respondent in the claim petition. The appellant also filed their written statement and had denied to pay any liability of compensation. In support of the claim petition, the respondent No.1 examined himself as PW.1 and he exhibited the following documents: (i) Doctor's prescription (Ext.1 to 3), (ii) X-ray report (Ext.4), (iii) Medical Certificate (Ext.5), (iv) Police Report (Ext.6), (v) Salary Certificate (Ext.7), (vi) X-ray plate(Ext.8), (vii) Horoscope of respondent No.1 (Ext.9) and (viii) Driving Licence (Ext.10).

7. In his cross examination, the respondent No.1 had stated that he cannot remember the date when the Doctor had examined him last and that what was written in Ext.5 i.e. the medical certificate. The claimant has also examined the Dr. S.C. Sarma, as PW.2, who had advised that on 20.08.2006, he was working as SDM & HO at Barpeta Civil Hospital and that on the date when he had examined the respondent No.1 he found the following injuries: "1. Pain, stiffness and loss of free movement of right upper leg. X-ray examination of right thigh showed evidence of inter trochantero fracture of Rt. femur.

2. A back coloured swelling of Rt. knee without evidence of bone injury of the

knee joint effected. Injury No.1 is grievous which is permanent partial. The permanent partial disablement of the injured is assessed at 35% and loss of earning capacity is assessed at 35%."

The certificate was issued on the basis of first examination on 20.05.2006 and on subsequent examination.

8. In his cross examination, the Doctor (PW.2) had stated that Ext.5 (Medical Certificate) was not given in his Letter Head or the hospital registration number is not recorded thereon. He stated that subsequent examination was not mentioned in para-5. He further stated that Ext.4 (X-ray report) shows that X-ray was done for the right hip joint. He further stated that he found the injury on the part of right hip. He also stated that he did not advise for X-ray on the date of issue of the medical certificate. He was not aware of the present condition of the respondent No.1. He also admitted that disablement and loss of earning capacity cannot be same for all the time and may be different. He denied that injuries were simple and the certificate was issued without examining the claimant.

9. No witness was examined by the appellant. The learned Tribunal on appreciation of evidence on record accepted that the income of the respondent No.1 was Rs.4,000/- per month and the loss of earning capacity by 35% was accepted. The age was taken as 35 years of the claimant, the compensation was computed as follows: $60\% \text{ of Rs.4,000/-} \times 197.89 \times 35\% = \text{Rs.1,65,530/-}$ The appellant was directed to deposit the awarded amount within 30 days from the date of receipt of the order together with interest of 9% per annum from the date of accident till the date of delivery.

10. The learned counsel for the appellant has submitted that no clinical finding was recorded in the injury report from which it can be said that the respondent No.1 was suffered from any permanent partial disability because as per the subsequent writing inserted in the certificate dated 31.08.2006 (Ext.5). The Doctor (PW.2) had stated that the certificate was issued as per his examination of the injured on 20.05.2006. The date of subsequent examination of the injured has not been reflected in the said injury report (Ext.5). It is further submitted that there is no document on record certifying that the fracture suffered by the respondent No.1 was not healed and, as such, the disability of 35% was on the basis of surmises and conjectures as no X-ray of the injured area was done to show that the injury had resulted in permanent partial disability. It is also submitted that onus of paying interest will arise only after lapse of 30 days time after depositing the awarded sum and therefore, the imposition of interest from the date of accident was not sustainable in the eye of law. It is further submitted that for determining the loss of earning capacity, it was incumbent on the part of the learned Commissioner, Workmen's Compensation to arrive at a finding that the loss of earning capacity was in relation to any employment which the injured was capable of carrying out.

11. The learned senior counsel for the respondent No.2 has submitted that the

respondent No.2 was the employer of respondent No.1 and the accident did take place as claimed by the respondent No.1. However, as the vehicle was duly indemnified with the appellant, he had contested the claim petition and also contested this appeal as a formal party to safeguard his own interest.

12. This Court has considered the submissions advanced by both sides and perused the materials on record. At the outset, it is required to clarify that although there is a mention in para-10 of the evidence on affidavit filed by the respondent No.1 that driving licence was exhibited as Ext.10, but the LCR does not reveal any such exhibited document. The copy of the driving licence was not filed along with the claim petition. Moreover, this Court is of the view that the purpose of proving Horoscope as Ext.9 perhaps may have arisen because the respondent No.1 could not provide any other proof of his age and if the driving licence was exhibited, it would definitely reflect the age of the driver.

13. On a perusal of the original copy of the medical certificate (Ext.5), there appears to be interpolation. The last paragraph of Medical Injury Report (Ext.5) consists of 6 (six) lines out of which last 3 lines are in different ink and last 3 lines did not appear in the photocopy of the injury report (Ext.5), which was filed along with the claim petition. Therefore, this Court deems it fit to record the contents of Ext.5 in this order so as to identify the interpolated and/or 3 added lines therein. The interpolated and/or added 3 lines are indicated in bold and underlines for identification here-in-below: "On 20/5/06, I examined the following patient at Barpeta Civil Hospital, who suffered injury in body due to RTA as alleged. Name of the patient: Ranjit Das, 35 S/o Late Suren Das Vill. Bindabanhati, Barpeta, PS & Dist. Barpeta Injury was as follows: (1) Pain, stiffness and loss of free movement of right upper leg. X-ray examination of right thigh showed evidence of inter trochantero fracture of Rt. femur. (2) A back coloured swelling of Rt. knee without evidence of bone injury of the knee joint effected. Injury No.1 is grievous which is permanent partial. The permanent partial disablement of the injured is assessed at 35% and loss of earning capacity is assessed at 35%. The grievous injury is Permanent Partial in nature. The certificate is issued on the date of first examination as 20/ 05/ 2006 and on subsequent examination till date. Sd/ illegible S.D.M. & H.O. Barpeta Civil Hospital Dr. S.C. Sharmah, Regd.No.5711-AMC"

14. From the above, it would appear that the 3 lines i.e. "The grievous injury is Permanent Partial in nature. The certificate is issued on the date of first examination as 20/05/2006 and on subsequent examination till date." are added later on. But in the photocopy filed along with the claim petition, these 3 lines quoted above are missing. Therefore, as on the date of filing of the claim petition, there was no material on record indicating injury had caused permanent partial disability on the respondent No.1.

15. On perusal of the claim petition it would show that the respondent No.1 did not plead in his claim petition that he had suffered any permanent partial disability. On perusal of the Doctor's prescription (Ext.2 & 3), it appears that

there is nothing on record to show the status of the injury as on the dates of prescription i.e. 19.05.2006, 20.5.2006, 22.05.2006, 25.07.2006, 30.05.2006. Therefore, in the absence of any examination, it is very difficult to rely on a certificate dated 31.08.2006 wherein the Doctor has subsequently stated that in the interpolated portion that certificate was issued on the basis of first examination i.e. 20.05.2006. On the said date, the respondent No.1 did not revisit the Doctor for showing the X-ray plate because the recording of fracture is recorded in the entry made in prescription dated 22.05.2006. Therefore, the purpose of interpolated portion with the 3 lines in the injury report dated 31.08.2006 appears to be to fill-up the lacuna. This calls for a further scrutiny of the veracity of the contents of Injury Report (Ext.5).

16. In the absence of any finding by any specialist that the fracture suffered by the respondent No.1 was not healed, this Court finds that there is no material before the learned Commissioner to hold that the respondent No.1 had suffered permanent partial disability within the meaning of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. Therefore, the injury report (Ext.5), which is found to have been interpolated by additional lines at the end, makes the said report unreliable. Therefore, the first substantial question of law is answered in negative and against the claimant/ respondent No.1.

17. Insofar as the second substantial question of law is concerned, it is well settled that only from the lapse of time allowed to pay the compensation i.e. the 30 days from the date of receipt of the order, the liability to pay interest will arise. Therefore, the direction of the Commissioner to pay interest from date of accident is not found to be sustainable.

18. In this connection, the learned counsel for the appellant has placed reliance in the case of New India Insurance Company Ltd. Vs. Anupama Singh and another, 2017 (3) GLT 770 wherein this Court had interpreted the provisions of Section 4(1)(c)(ii) of the Workmen's Compensation Act to hold that interest was payable after one month from the date of judgment and award passed by the learned Commissioner, Workmen's Compensation.

19. As this Court has disbelieved the injury report (Ext.5), in view of the ratio of the Golla Ranjana Vs. Divisional Manager, 2017(1) SCC 45: (2016) O SUP SC 420, this Court is inclined to remand the matter back to the learned Commissioner, Workmen's Compensation, Kamrup, Guwahati for a fresh decision in accordance with law.

20. This order of remand is in consonance with the Order XLI Rule 23-A CPC. On receipt of records, the learned Commissioner shall offer opportunities to the parties to adduce fresh evidence, if so advised. As the respondent No.1 had suffered the accident on 19.05.2006, it is hoped that the learned Commissioner shall hear and dispose of the claim petition as expeditiously as possible in accordance with law.

21. It is submitted by the learned counsel for the appellant that in the

meanwhile, in view of the order passed in connection with the appeal, the appellant has deposited a sum of Rs.90,000/- before the learned Commissioner, Workmen's Compensation, Kamrup, Guwahati and as per the order dated 24.08.2011, the same had been disbursed to the respondent No.1. Needless to say that the said amount already withdrawn by the respondent No.1 shall be subject to the result of fresh adjudication of the matter on remand.

22. The appeal stands partly allowed. The parties are left to bear their own cost.

23. LCR be returned back immediately.