

(2015) 02 GAU CK 0078

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 26 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Abu Shama Ali and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 30, 4(1)(c)(ii)

Citation : (2015) 2 GLT 851

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : B.K. Purkayastha, for the Appellant

Judgement

Nishitendu Chaudhury, J—This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and order dated 26.08.2003 passed by the Workmen's Compensation Commissioner, Dhubri in WC Case No. 30 of 2002. By this judgment the Workmen's Compensation Commissioner directed the Insurance Company to make payment of Compensation to the tune of Rs. 2,66,952/- within a period of 30 days, failing which additional interest was also ordered. The Compensation Commissioner allowed interest @ 9% per annum with effect from the date of accident till adjudication. A proceeding was initiated on the basis of a petition submitted by Md. Abu Shama Ali on 24.05.2002 stating that he was a handyman of truck No. NLM. 3104 owned by the opposite party No. 1. While moving from Aijan Bazar towards Bongaigaon on 15.02.2002 the vehicle met with an accident wherein he got injured. He was initially admitted to 30 bedded rural hospital at Bongaigaon and was latter on treated by Dr. Gobinda Das and Dr. P.N. Patel of Bongaigaon. Pursuant to this accident police registered G.D. Entry No. 319 on 15.02.2002 of Sidli police station. This is because the accident took place near Sundari which is within jurisdiction of Sidli police station. The claimant alleged that apart Rs. 50 as daily allowance, he was being paid salary of Rs. 2,000/- per month and thus, his monthly income was Rs. 3,500/-. He was 20 year old as on the date of

accident. He duly served notice under Section 10 of the Workmen's Compensation Act, 1923 to the Employer (O.P. No. 1) for the injuries sustained by him at his left elbow. According to the claimant, he had suffered fracture at left elbow which, however, is not an injury mentioned in Schedule-1 to the Act. He examined himself only as P.W. 1 and produced a medical certificate showing that he suffered permanent partial disability to the extent of 50%. Upon such facts, the Workmen's Compensation Commissioner himself assessed the loss of earning capacity of the claimant at 50% and passed the aforesaid judgment and award for compensation. This judgment has been brought under challenge in the present appeal.

2. While admitting the appeal this Court framed two substantial questions of law and the same are quoted below:

i) Whether the learned court below committed an error of law in passing the judgment and award in determining compensation without the loss of earning capacity of the claimant/injured is determined by a Registered Medical Petitioner as required under the Section 4(1)(c)(ii) of the W.C. Act, 1923. And whether the impugned judgment and, award is liable to be set aside?

ii) Whether the Insurance Co. have any liability to pay interest in view of the law laid down by the Hon"ble Supreme Court?

3. I have heard Mr. B.K. Purkayastha, learned counsel for the appellant. None appears for the respondent, although name of the learned counsel is disclosed in the cause-list.

4. The first substantial question of law appears to be central for determination of the appeal. The impugned judgment shows that the Registered Medical Practitioner who had issued the certificate was not examined by the Commissioner. The Insurance Company or the owner, therefore, did not have an opportunity to cross-examine the Registered Medical Practitioner to find out as to whether his assessment was mere a guess work or it was based on reality. Assessment of Registered Medical Practitioner himself without being examined in the Court came up for consideration before this Court on earlier occasions. Learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of *New India Assurance Co. Ltd. Vs. Sanjit Kumar and Another*, (2001) ACJ 1690 : (2000) 2 GLT 567 : (2001) 1 LLJ 891 . In Paragraph-2 of this judgment this Court relied on earlier judgments and held that in view of specific requirement of the provision of Section 4(1)(c)(ii) of the Workmen's Compensation Act, the loss of earning capacity is to be assessed by a qualified medical practitioner and such a provision cannot be a mere formality. Qualified medical practitioner not only assesses the loss of earning capacity but also the nature of injuries, the percentage of physical disability, the capacity and the injuries to perform the nature of the work with specific reference to the type of work he is engaged in and several other factors to come to a finding as to extent of the loss of earning capacity. This Court held that a Registered Medical

Practitioner, therefore, has to be examined. Similar is the view of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, (2007) 2 ACC 374 : (2007) ACJ 845 : AIR 2007 SC 1208 : (2007) 112 FLR 1033 : (2007) 3 JT 176 : (2007) 1 LLJ 1035 : (2007) 2 SCALE 455 : (2007) 2 SCC 349 : (2007) 1 SCC(L&S) 643 : (2007) 2 SCR 117 : (2007) 3 SLJ 62 : (2007) 1 UJ 240 . Necessity for examining qualified Registered Medical Practitioner, therefore, is an established procedure as deduced from perusal of Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. Keeping in mind this position of law, the impugned judgment and award cannot stand to scrutiny. This is because in the case in hand claimant did not examine the doctor who had issued the medical certificate. Neither Insurance Company nor the owner had any opportunity to put question on the validity of the certificate so as to enable the Court to arrive at a finding as to whether the assessment of the doctor was made by considering the relevant circumstances or it was a mere guess work following the judgment passed by this Court as well as the Hon'ble Supreme Court in this regard. Therefore, this appeal is liable to be allowed. It is accordingly allowed.

5. In view of the fact that impugned judgment and award has been set aside. There is no necessity to decide the second substantial question of law which relates to liability to pay interest.

6. Impugned judgment and award being set aside, appeal is allowed. Records shall be sent back to the concerned Employee's Compensation Commissioner, Dhubri, forthwith for deciding the case afresh after affording adequate opportunity to the claimant to examine a qualified Registered Medical Practitioner for the purpose of proof of alleged permanent disability and its extent. The trial court shall determine the loss of earning capacity on the basis of the evidence led by the parties and shall decide the matter afresh preferably within a period of six months from the date of receipt of the records.

7. It is submitted that Insurance Company has already deposited the amount with the concerned Compensation Commissioner and the same is lying. The amount shall not be disbursed to anyone till the final disposal of the case by the Employees Compensation Commissioner, Dhubri. No order as to costs.