
(2014) 04 RAJ CK 0132
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1298/2009

United India Insurance Co. Ltd.

APPELLANT

Vs

Chhotu Ram Kumawat and Another

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(aa), 4(1)

Citation : (2014) 04 RAJ CK 0132

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Tripurari Sharma, Advocate for the Appellant; Ram Singh Rathore, Advocate for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J.—This misc. appeal u/s 30(aa) of the Workman Compensation Act, 1923 has been filed against the judgment dated 16.12.2008 passed by the Workmen Compensation Commissioner, Jaipur City, Jaipur (hereinafter "the Commissioner") allowing the claim petition filed by the respondent claimant (hereinafter "the claimant") and awarding an amount of Rs. 2,60,292/- + interest @ 12% p.a. from 30 days following the date of accident till the date of payment. Counsel for the appellant submitted that the compensation was determined by the Commissioner in respect of a non-scheduled injury without determining the loss of earning capacity on the basis of an assessment made by a Registered Medical Practitioner who had determined the percentage of permanent disability. He submitted that even otherwise for the certificate of disability to be admissible in evidence it was required to be proved by the Doctor who issued it by entering the witness box and subjecting himself to cross-examination. In the instant case neither the Doctor who issued the certificate nor any expert was produced before the court and deposed with regard to the loss of earning capacity of the claimant. Yet the compensation was determined on the basis of the mere ipse dixit of the Commissioner. These two lacunaes vitiate the

impugned judgment dated 16.12.2008. Reliance has been placed on the Judgment of this Court in the case of National Insurance co. Ltd. v. Jitendra Kumar (SB Civil Misc. Appeal No. 2473/2004) decided on 21.1.2014 in support of the contentions wherein it has been held that it is a well settled that a certificate of disability is not admissible in evidence until it is proved by the Doctor who issued it by entering the witness box. And further merely the permanent disability certificate indicating the percentage of permanent disability cannot be treated as synonymous with the loss of earning capacity. Loss of earning capacity has to be determined in terms of section 4(1) Explanation-II of the Act of 1923 by a registered medical practitioner.

2. Aside of the aforesaid the Act of 1923 also empowers the Commissioner to take expert evidence on technical issues inter-alia for determining compensation. Loss of earning capacity without doubt is a matter of expert evaluation and cannot be left to the arbitrariness and ipse-dixit of the Commissioner. In the instant case the permanent disability certificate of 25% was not proved by the Doctor entering the witness box yet the Commissioner has arbitrarily assessed the loss of earning capacity as 50%.

3. Consequently, I would allow this civil misc. appeal and set aside the judgment dated 16.12.2008 passed by the Workmen Compensation Commissioner, Jaipur City, Jaipur to the extent of determination of the claimant's loss of earning capacity. Yet as the matter relates to compensation under a socio economic beneficial legislation, I would remand the matter to the Commissioner for decision afresh only on the point of loss of earning capacity in accordance with law as detailed here-in-above after due opportunity to the contesting parties. The misc. appeal accordingly stands disposed of.