
(2015) 10 GAU CK 0025
In the Gauhati High Court
Case No : MFA No. 146/2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Dinesh Chandra Mandal and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

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

Citation : (2015) 10 GAU CK 0025

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : S. Dutta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J.—In this appeal under Section 30 of the Workmen's Compensation Act, 1923 (now read as Employees Compensation Act, 1923, hereinafter referred to as the "Act") the insurance company has challenged the Judgment and award dated 31.8.2007 passed by the W.C. Commissioner, Dhubri in WC Case No. 38 of 2006 awarding compensation of Rs. 4,07,700/- to the claimants along with interest @ 9% per annum w.e.f. from the date of accident.

2. The brief facts involved in the case is that one Dinesh Chandra Mandal as claimant lodged a claim petition with the W.C. Commissioner, Dhubri stating that his son Late Biswajit Mandal was a driver with respect to vehicle No. AS-01/N-6421 belonging to one Mrs. Rina Saha. The opposite party No. 1 in the WC Case stated that on 18.5.2006 the vehicle met with an accident at Jaraimore near Taragong Bridge under Boxirhat Police Station as a result of which the driver sustained grievous injuries. He was immediately shifted to Tufanganj Hospital and thereafter to Koochbehar but he succumbed to the injury on the same day. Boxirhat Police station registered GDE No. 29 of 2006 on the same day in regard to the same accident. Claimant stated that his son used to earn Rs. 2500/- per month as salary and Rs. 100/- per day as daily allowance and that he was 32 years of age at the time of the accident. He demanded a sum of Rs. 7 Lakhs

being compensation due to the death of the son who is stated to be the sole bread earner of the family. Petitioner further disclosed that the vehicle was under insurance cover of United India Insurance Co. Ltd., Dhubri Branch vide Police No. 130603/31/05/1013 and was valid from 7.12.2005 to 6.12.2006. It was disclosed that the driver was having a valid driving license vide License No. 1007/GP and was valid as on the date of accident.

3. On being notified, opposite party No. 1 owner appeared and submitted written statement and admitted basic averments made in the claim petition in regard to employment and the wage paid to the claimant's son. Opposite party No. 1 also disclosed that vehicle was under valid insurance of the United India Insurance Co. Ltd., vide aforesaid policy number. The opposite party No. 2 insurance company on the other hand by submitting the written statement denied the liability to compensate the claimant and raised objection on the point of maintainability as well as on merit. The employment, accident, quantum of monthly salary etc were all disputed by the insurance company.

4. Upon consideration of the rival contention of the parties, the WC Commissioner framed four issues and asked the parties to prove their respective cases:

"(i) Is there any cause of action to entertain the claim?

(ii) Whether the claim petition is maintainable in its present form?

(iii) Whether the O.P.s are liable to pay compensation as claimed by the claimant petitioner?

(iv) If yes, what relief is the claimant petitioner is entitled to?"

4. The claimant examined himself as sole witness and proved the appointment letter (Exhibit-1), post-mortem report (Exhibit-2), driving license of the insurance company policy as well as notice under Section 10 of the W.C. Act, 1923. The opposite party insurance company did not lead any evidence. Since, it is a case involving death of a workman, the learned Tribunal proceeded to assess compensation under Section 4(1)(a) of the Act after having satisfied itself that the workman had died due to the accident in course of his employment. The W.C. Commissioner considered daily allowance along with monthly salary of the deceased and thus arrived at the finding that the claimant was entitled to compensation on the basis of monthly salary of Rs. 4000/- within the meaning of Section -4(1)(a) of the Act. The W.C. Commissioner accepted the contention of the petitioner that the deceased was 32 years of age at the time of the accident although post mortem report shows his age as 35 years. Upon such satisfaction, the W.C. Commissioner assessed the compensation at Rs. 4,07,700/- and directed the insurance company to make payment of the amount alongwith interest @ 9% per annum from the date of accident till realization. It is this judgment which has been brought under challenge in the present appeal.

5. This court while admitting the appeal on 2.1.2008 framed the following two

substantial questions of law:

"(i) Whether, in view of the law laid down in the case of Oriental Insurance Co. Ltd. Vs. Lakhimai Das and Another, , the learned Commissioner, Workmen's Compensation has acted legally in assessing the compensation without deducting the daily allowances of the workman from his salary?

(i) Whether, in view of the law laid down in the case of National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, , the learned Commissioner, Workmen's Compensation has acted legally in directing payment of interest on the amount of compensation awarded by him from the date of the accident ?"

6. I have heard Mr. S. Dutta, learned counsel for the appellant. None appeared for the respondent when the matter is called up for hearing. Since the appeal is of the year 2007, the court heard the matter ex-parte.

7. Mr. S. Dutta, learned counsel for the appellant submits that the W.C. Commissioner committed error in not making deduction of daily allowances while computing compensation under Section 4(1)(a) of the Act. According to him, daily allowance for food of the workman was given only on the days of his work and so it could not have been regular payment to him. Having gone through the evidence of the sole witness adduced by the claimant, it does not appear that any such suggestion was put forward to the sole witness by the insurance company. The insurance company has not led any evidence to show that daily allowance of Rs. 100/- was not always paid to the workman and that it was not a regular condition of his service. The insurance company did not examine any witness and merely cross examined the sole witness of the petitioner. Petitioner specifically stated that apart from Rs. 2500/- being the monthly salary, his son used to be paid Rs. 100/- per day for food. Even no question was put to him that the workman was not required to work for the whole month. Under such circumstances, it emanates as a matter of corollary that apart from monthly salary of Rs. 2500/-, Rs. 100/- was also supposed to be paid to the workman on all the days of the month when he had worked. Once such probability on facts are discernible, the law laid down in the case of Mohd. Ameeruddin and Another Vs. United India Insurance Co. Ltd. and Another, comes into play. In para-6 and 7 of this judgment, the Hon"ble Supreme Court has considered this aspect of the matter. Para-7 of the aforesaid judgment is quoted below:

"7. We are unable to appreciate the view taken by the High Court on both counts. First, there was no evidence that the daily allowance of Rs. 50 was not paid to the deceased every day or even that he was not on work on every day of the moth. On the contrary, there is evidence on record that apart from the monthly salary of Rs. 2500/-he was getting Rs. 50 as daily allowance. We, therefore, hold that the Tribunal was right in assessing the monthly income of the deceased at Rs. 4000."

8. In view of what has been stated above in the absence of supporting facts, the strenuous arguments made by the appellant that payment of daily allowance of

Rs. 100/- was not a part of the service condition of the workman cannot be accepted. Consequently, substantial question at serial No. 1 is decided in favour of the workman and against the appellant.

9. Mr. S. Dutta, learned counsel fairly submits that in view of Full Bench Judgment of the Hon"ble Supreme Court in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, , he would not press the second substantial question of law and accordingly there is no necessity for deciding the second substantial question of law.

10. Consequently, the appeal fails. It is accordingly dismissed.

11. No order as to cost. Interim order passed earlier stands automatically vacated.

12. The appellant shall deposit the balance amount with the Registry of this Court within 2(two) months from today. Thereupon, the Registry shall send a registered letter to the claimant Dinesh Chandra Mandal at the address mentioned in the memorandum of appeal for withdrawal of the amount and the amount shall be disbursed to the claimant on being duly identified to the satisfaction of the Registry.