
(2015) 02 GAU CK 0036

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 11 of 2003

United India Insurance Co. Ltd.

APPELLANT

Vs

Safiquil Islam and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A

Workmens Compensation Act, 1923 — Section 2(1)(g), 2(1)(m), 30, 4, 4(1)(c)(ii)

Citation : (2015) 145 FLR 651 : (2015) 2 GLT 734 : (2015) 3 LLJ 202

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : S. Dutta and Choudhury, for the Appellant

Final Decision : Allowed

Judgement

Nishitendu Chaudhury, J.

1. This appeal under section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 25.11.2002 passed by the Commissioner, Workmen's Compensation, Nagaon in W.C. Case No. 124 of 2000 thereby holding that the respondent-workmen suffered disability to the extent of 30% and his loss of income was 50%. Thereupon the Commissioner quantified the compensation at Rs. 1,04,117/- and directed the insurance company to make payment along with simple interest at the rate of 12% per annum on the compensation payable w.e.f. 22.8.2000. The claimant was a driver in a 407 mini bus bearing registration No. ASV 2943. On 22.8.2000 when the vehicle was moving from Nagaon to Dhing, it met with an accident wherein the claimant driver sustained injuries at his chest. There was abrasion and also fracture on 6th, 7th and 9th right ribs. The workman was initially treated at Dhing Hospital and thereafter he was brought to Nagaon Hospital. On his recovery he submitted claim before the jurisdictional Workmen's Compensation Commissioner. Claimant examined himself as P.W. 1 as well as one Dr. Durgeswar Borah as P.W.2. In course of his deposition, the claimant stated that on 22.8.2000 the accident had

taken place when he was running the vehicle from Nagaon to Dhing. At around 10.00 am in the morning mechanical defect took place in the vehicle and the same was kept seized as a result of which the accident occurred and his ribs and knee were injured. He informed the owner and demanded the expenditure for his treatment from the vehicle owner who declined to make any payment. He got his injuries treated by Orthopaedic Surgeon. He said because of this incident, there was continuous pain in his chest. Exhibit 1 is the accident information report lodged with Dhing Police Station leading to registration of Dhing P.S. Case No. 84/2000 under section 279/304-A of IPC. The claimant further stated that Ext. 3 is the medical certificate showing the injury he had suffered. Exts 4 is the prescription and Ext. 5 is notice copy. Ext. 6 to 12 are money receipts against purchase of medicine. Ext. 13 is his driving license which is proved in original. Ext. 14 is the certified copy of F.I.R. In course of cross-examination, he stated that after the accident he has stopped running vehicles although. Three ribs of his right chest got fractured by the accident and he was at bed rest for 15/20 days. Of course, he admitted that the injury was healed but because of laziness he does not feel inclined to work anymore.

2. PW 2, Dr. Duregeswar Borah proved the medical certificate Ext. 3 was issued by him. He deposed that 6th, 7th and 9th ribs on the right side of the claimant got fractured because of the incident and he certified the physical disability to the 30%. This is because the patient developed Chronic Asthmatic Bronchitis and he has become disabled from doing heavy works. Thus, he lost 50% of his earning capacity. The insurance company cross-examined the doctor. While in course of cross-examination he stated that while giving the second certificate he did not consult any X- ray report. He gave only opinion about chronic costochondritis of right chest wall with chronic asthmatic bronchitis. He gave opinion that the nature of the injury suggests that there is likelihood for the same being healed. Basing upon these materials the learned Commissioner, Workmen's Compensation passed the judgment and award on 25.11.2002 holding that the claimant suffered permanent partial disablement to the extent of 30% and his loss of earning capacity was quantified at 40%.

3. I have heard Mr. S. Dutta, learned Senior Counsel assisted by Ms. M Choudhury for the appellant. None appears for the respondent although notice was duly served. Mr. S. Dutta, learned Senior Counsel for the appellant submits that holding 40% loss of earning capacity is devoid of any evidence whatsoever. If the learned Court placed reliance on medical certificate it should have accepted disability at 50% because doctor opined the same to be 50%. There is no material whatsoever to arrive at a finding that the permanent disability was at 30%. Learned Counsel for the appellant accepts the same. Once the claimant admitted in course of cross examination that injuries suffered by him had been healed and the fracture got automatically repaired by efflux of time, the disability cannot become permanent in any way.

4. This Court while admitting the appeal framed as many as three (3) substantial

questions of law which are quoted below:--

(1) Whether the injuries sustained by the workman amounts to permanent partial disablement within the meaning of section 2(1)(g) of the Employees' Compensation Act, 1923 and if not whether the workman is entitled to compensation under section 4(1)(c)(ii) or under section 4(1)(d) of the 1923 Act?

(2) Whether the learned Commissioner is justified in taking the monthly wages of the workman as Rs. 3,000/- in view of the averments made by the workman in the claim petition that his monthly wage was Rs. 2,100/- and also in view of Explanation II to sub-section 1 of section 4 of the 1923 Act as stood prior to the amending Act 46 by 2000 which came into effect from 8.12.2000?

(3) Whether the "Wages" as defined in section 2(1)(m) includes the daily allowance payable/paid to the workman concerned?

5. Mr. S. Dutta, submits at the threshold that the substantial question of law No. 3 referred to above does not survive anymore as the point is no longer res integra. It has already been decided by Apex Court that section 2(1)(m) of the Workmen's Compensation Act, 1923 includes daily wages payable to the workmen concerned. In that view of the matter, there is no necessity for deciding the substantial question of law No. 3. Coming to the second substantial question of law, it is based on the proposition that learned Commissioner, Workmen's Compensation proceeded on the premises that monthly income of the claimant was Rs. 3,000/-. But from perusal of the calculation it appears that the 60% of the monthly income came to Rs. 1200/- which shows that the monthly income was calculated at Rs. 2,000/-. So mentioning the monthly income at Rs. 3,000/- perhaps is a typographical error. The Compensation Commissioner really relied on Rs. 2,000/- as the monthly wage and the same cannot be faulted with. Under such circumstances, the basic factual substratum for substantial question of law No. 2 also does not exist. This question does not require any consideration. Having so situated, the only point is to be decided by the Court is substantial question of law No. 1.

6. The injury report Ext. 3 shows that doctor gave opinion about fracture at 6th, 7th and 9th ribs of the right side of the chest on the basis of X-ray report. The doctor found that there were fractures on these ribs and because of the fractures chronic asthmatic bronchitis had developed. In course of cross-examination, the doctor said that while giving subsequent report he did not consult any X-ray report. Ext. 3 appears to have been interpolated. When it is compared with the deposition of the PW 2 when he said that for last time he examined the claimant on 4.5.2001 but in Ext. 3 it is shown to be 4.5.2002. A similar interpolation is noted in recording of evidence of PW 1. It is apparent that initially it was recorded at 30% then it was made 50% and in words it is written 50% without any signature for authentication. All these developments show that everything is possible in the Court of Employees' Compensation at Nagaon. The finding of the learned Commissioner, Workmen's Compensation is based on Ext. 3 as well as

evidence given by the PW 1 and PW 2. If all these documents appear to be interpolated in such way, the credibility of the opinion of the doctor itself becomes doubtful. Consequently, findings arrived at by the Employees' Compensation Officer also has to be adjudged as perverse. In view of that the sole substantial question of law No. 1 is decided in the negative. There is no evidence on record to come to a finding that the claimant has suffered from permanent partial disability.

7. The impugned judgment and award is set aside and the matter is sent back to Employees' Compensation Commissioner, Nagaon for allowing the parties to lead evidence afresh and thereafter to decide the claim.

8. The appeal stands allowed.

9. No order as to costs. Send down the L.C. Rs immediately. Miscellaneous Case No. 29/2003 is, accordingly, closed.