

(2018) 09 GAU CK 0050

In the Gauhati High Court

Case No : Miscellaneous Firat Appeal No. 3 of 2010

United India Insurance Co. Ltd

APPELLANT

Vs

Uttam Kr. Saha And Anr

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4, 4(1), 4(1)(c), 4A(3)(a), 10, 30
Revenue Recovery Act, 1890 — Section 5
Code of Civil Procedure, 1908 — Order 41 Rule 2, Order 41 Rule 23A

Citation : (2018) 09 GAU CK 0050

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S. Dutta, D. Baruah, M. Choudhury, D. Chakraborty, S. Dutta, K. Bhattacharjee, M. Bhattacharjee

Final Decision : Allowed

Judgement

1) Heard Mr. S. Dutta, the learned senior advocate assisted by Mr. S. Dutta, learned advocate appearing for the appellant as well as Mr. K. Bhattacharjee, learned

advocate appearing for the respondent No. 1.

2) This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 30.09.2008 passed by the learned

Commissioner, Workmen's Compensation, Dhubri in W.C. Case No. 50/2001 was admitted by this Court by order dated 28.01.2010 on the following substantial

questions of law:-

1. Whether the daily allowances paid to the workmen can form part of wages of the workman?

2. Whether the learned Commissioner can include daily allowances paid to the workman in monthly salary paid to the workman while assessing compensation?

3. Whether the learned Commissioner can simply on the basis of a certificate wherein the percentage of disability was also not maintained and without

examining the doctor on his own assessed the disability at 30%?

4. Whether learned Commissioner can impose interest from the date of accident.

3) In course of hearing, which had concluded on 28.08.2018, the learned senior advocate for the appellant had, amongst others, argued on the provisions of Section

4(1), Explanation- II of the Employee's Compensation Act, 1923, as applicable on the date the accident. Thereafter, on a perusal of the records, it appeared that the

said ground was not within the scope of the substantial questions of law, on which the appeal was admitted for hearing. As such, at the instance of this Court, the

matter was again re-listed before the Court on 30.08.2018 under the heading of 'To be spoken to', as this Court desired that in compliance of the provisions of Order XLI Rule 2 CPC, the respondent must be specifically put to notice of hearing on additional grounds not contained in the Memo of Appeal. Accordingly, on

30.08.2018, the learned senior advocate for the appellant had submitted that he is not pressing the substantial questions of law No. 1 and 2 and instead, he is pressing

the point that as the accident had taken place on 05.11.2000, as on the said date, the provisions of Section 4(1), Explanation II of the Employee's Compensation

Act, 1923 (previously Workmen's Compensation Act, 1923) as applicable, was the amendment to the said provisions made vide amending Act 30 of 1995 w.e.f.

15.09.1995. It was submitted that as per the said amendment, it was provided that where the monthly wages of a workman exceeds Rs.2,000/-, his monthly wages for

the purpose of Clause(a) and Clause(b) of Section 4 thereof shall be deemed to be Rs.2,000/-.

4) Both sides were heard afresh in view of the said additional grounds for the appeal as urged by the learned senior advocate for the appellant. Accordingly, the substantial questions of law on which this appeal has been heard has been re-

cast as under:-

i. Whether the computation of award passed by the learned Commissioner, Workmen's Compensation, is in accordance with the provisions of the Workmen's

Compensation Act, 1923?

ii. Whether without examining any medical practitioner, the assessment of 30% disability of respondent No.1 by the learned Commissioner of his own on the basis of

a injury certificate (Ext.4, 5 and 10), where there is no mention of any percentage of disability is sustainable on facts and in law?

iii. Whether learned Commissioner can impose interest from the date of accident?

5) The respondent No. 1 is the claimant in W.C. Case No. 50/2001. As per claim petition, the respondent No. 1 was a bus conductor by profession having

conductor's license No. 812/G and was employed by the respondent No. 2 in respect of his tourist bus bearing registration No. AS-17-0674. On 05.11.2000, at

about 7.45 P.M., while the bus was proceeding from Guwahati to Dhubri, at Sonamukhi under Chapar P.S., some dacoits came into the bus in disguise of passengers

armed with firearms and sharp weapons like dagger etc. and they had attacked the driver, the co-conductor, the respondent No. 1 and the passengers, and injured the

respondent No.1 as well as many passengers in the vehicle and looted all their belongings, cash, ornaments, bags, etc. and left the injured people in the jungle. The

respondent No. 1 along with others were taken by the police patrol party to Bilasipara Hospital and the respondent No. 1, who had suffered grievous injuries

including stab injuries, were shifted to Dhubri Civil Hospital in serious condition by the police, who registered Chapar P.S. Case No. 135/2000. It was claimed that the

respondent No. 1 had suffered permanent partial disablement which was not cured. He had stated that he was earning a sum of Rs.4,200/- per month including daily

allowance of Rs.100/- per day. It was stated that the vehicle was duly insured by the appellant which was valid up to 22.03.2001 and although notice under Section 10

of the Workmen's Compensation Act was served on the respondent No. 2, but nothing was done as the claim petition was filed including compensation of

Rs.5,00,000/-.

6) The appellant had contested the case by filing their written statement, thereby denying the incident as false and claimed that no injury was caused due to the incident and in course of his employment. The respondent No. 2 i.e. the owner of the vehicle admitted that his vehicle was duly insured with the appellant and therefore, the liability of paying compensation was to be borne by the appellant.

7) The respondent No. 1 had examined himself as P.W.1 and had exhibited the following documents, viz. Notice under Section 10 (Ext.1), Postal receipt (Ext.2), Photostat copy of ejahar (Ext.3), Certified copy of injury report (Ext.4), Discharge Slip issued by Dhubri Civil Hospital (Ext.5), Conductor's licence (Ext.6), Driving

licence (Ext.7), Photocopy of the Insurance Policy (Ext.8), Photocopy of R/C of vehicle (Ext.9), Advice Slip, dated 23.03.2004 issued by doctor of Dhubri Civil Hospital

(Ext.10).

8) The learned Commissioner, Workmen's Compensation had framed the following four issues for trial:-

1. Is there any cause of action for the claim petition?
2. Whether the claim petition is maintainable in its present form?
3. Whether the O.P.s are liable to pay compensation as claimed by the claimant petitioner?
4. If yes, what relief is the claimant petitioner entitled to?

9) In respect to of issues No. 1 and 2, on the basis of the ejahar (Ext.3) and the Conductor's licence (Ext.6), it was held that the respondent was in employment of

the respondent No.2, and it was also held that he had sustained injuries in the accident which had occurred on 05.11.2000, rendering him unemployed. Accordingly,

the said issues No.1 and 2 were decided in favour of the respondent No.1. In respect of issue No.3, it was held that the respondent No.1 was on duty on 05.11.2000

and by observing that - "an accident which occurs on account of risk which is incident of employment then the claim for compensation can succeed provided the

workmen has not exposed himself to add an peril by his own prudent act", it was held that the respondent No.1 was entitled to compensation. In respect of

issue

No.4, the learned Commissioner, by relying on the medical certificates (Ext. 4, 5 & 10), had held that though no percentage of disability was mentioned in the

certificate, the documents and the injury certificate revealed that the respondent No.1 had sustained the multiple injuries and some injuries were grievous in nature for

which middle finger of the right hand became functionless and the right hand became functionless and the right hand of the respondent No.1 was also weak for normal work, which led to his unemployment since the date of the accident. Hence, the disability suffered by the respondent No.1 was assessed at 35%. Therefore,

the age of the respondent No. 1 was taken to be 34 years and his monthly salary was considered to be Rs.4,000/- as per Explanation-II of Section 4 of the

Workmen's Compensation Act, 1923. Accordingly, by holding that the respondent No. 1 was entitled to compensation as per Section 4(1)(c) of the

Workmen's Compensation Act, the calculation of compensation was done as follows:- $35\% \times \text{Rs.}2,400/- \times 199.40 = \text{Rs.}1,67,496/-$ (Rupees One lakh sixty seven

thousand four hundred ninety six only). Interest @ 9% interest was awarded from the date of accident, i.e. 05.11.2000, further providing that the award will carry

further interest @ 9% per annum. For the delay in payment, it was provided that if the award amount was not paid, it could be recovered as arrear land revenue under

Section 5 of the Revenue Recovery Act, 1890.

10) The learned senior advocate for the appellant submits that in view of the statutory provision contained in Section 4(1), Explanation II of the Workmen's

Compensation Act, 1923 as existed vide Act 30 of 1995, w.e.f. 15.09.1995 to 07.12.2000 (i.e. on the date of the accident on 05.11.2000), even if the monthly wages of the

workman exceeded Rs.2,000/-, for the purpose of computing compensation shall be deemed to be Rs.2,000/-only. Therefore, it is submitted that the learned

Commissioner had no jurisdiction or power to quantify and/or compute the compensation amount by accepting the wages of the respondent No.1- workman to be

Rs.2,400/-. It is submitted that after the date of the accident, i.e. w.e.f. 08.12.2000, the provisions of Explanation II to Section 4(1) of the Workmen's

Compensation

Act, 1923 was amended vide Act 46 of 2000, thereby enhancing the monthly wages, for the purpose of Clause (a) in Clause (b) of Section 4(1) of the Workmen's

Compensation Act to be Rs.4,000/- only.

11) It is further submitted that the Hon'ble Supreme Court in the case of Ved Prakash Garg vs. Premi Devi and Ors., (1997) 8 SCC 1 had held that 'in that

light when sub-Section (3) of Section 4-A is seen, it becomes obvious that once the compensation due under the Act becomes ascertained either provisionally under

sub-Section (2) or finally on adjudication by the Commissioner and if the employer does not pay the same, within one month from the date it thus falls due, the

Commissioner can direct under sub-Clause (a) of Section 4-A(3)(a) provided therein and also penalty'. It is submitted that following the said ratio, this Court, in

the case of Oriental Insurance Co. Ltd. Vs. Paresh Narzary and Anr., 2012 (4) GLT 718, held that the interest was to be payable after thirty days from the date of

judgment and award and the said ratio was followed in the subsequent cases of New India Assurance Co. Ltd. Vs. Paltu Sah and Ors., 2017 (1) GLT 214 and New India

Assurance Co. Ltd. Vs. Gopal Shill, 2017 SCC online GAU 1013.

12) Assailing the impugned judgment and order, it is also submitted that in this case, no doctor was examined to prove the extent of the injury or the injury report

(Ext.4), or any other medical documents. Hence, the learned Commissioner erred in law in holding that the respondent No.1 had suffered permanent partial disability.

Hence, it is submitted that this was a case where the nature of injuries must be held to be not proved and therefore, the respondent No. 1 was not entitled to any compensation.

13) Per contra, the learned advocate for the respondent No.1 has submitted that notwithstanding the date of accident, the claim petition was decided on 13.09.2008.

At that point of time, the learned Commissioner had the power and authority to accept monthly wages of a workman to be Rs.4,000/- per month. Hence, it is

submitted

that as the provisions of the Workmen's Compensation Act, 1923 was a beneficial legislation, no interference was called for in respect of the computation of

compensation because on the date of adjudication, the monthly wages was statutorily enhanced to Rs.4,000/- for the purpose of sub-clause (a) and (b) of Section 4(1)

of the said 1923 Act.

14) As regards the claim of interest from the date of accident, the learned advocate for the respondent No. 1 has placed reliance on the case of Pratap Narain Singh

Deo Vs. Srinivas Sabata and Anr., AIR 1976 SC 222. Paragraphs 6, 7 and 8 thereof is quoted herein below:

6. It has next been argued that the Commissioner committed a serious error of law in imposing a penalty on the appellant under Section 4A(3) of the Act as the

compensation had not fallen due until it was 'settled' by the Commissioner under Section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section, provides that the employer shall be liable to pay

compensation if 'personal injury is caused to a workmen by accident arising out of and in the course of his employment'. It was not the case of the employer that

the right to compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury,

against the employer or any other person. The employer therefore become liable to pay the compensation as soon as the aforesaid personal injury was caused to the

workmen by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due

until after the Commissioner's order dated May 6, 1968 under Section 19. What the section provides is that if any question arises in any proceeding under the Act

as to the liability of any person to pay compensation or as to the amount or

duration of the compensation it shall, in default of agreement, be settled by the commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was

caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated,

he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then

there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was

driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection to the

jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate

that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the

payment of interest and the penalty.

15) In this regard, it is submitted that the above referred case was decided by a larger Bench strength of four Hon'ble Judges and therefore, the decision of the Hon'ble Apex Court in the case of Ved Prakash Garg (supra), which was passed by the Bench strength of two Judges cannot have the force of binding precedent.

Therefore, it is submitted the previous decisions of this Court as well as the decision rendered by the Hon'ble Supreme Court in the case of Ved Prakash Garg

(supra), must be considered to be per incuriam and that this Court will be bound by the ratio laid down by the Hon'ble Supreme Court, rendered in the case of

Pratap Narain Singh Deo (supra), where the larger Bench of the Honâ??ble Supreme Court had held that the employer was liable to pay compensation as soon as the

personal injury was caused to the employee. The learned advocate for the respondent No.1 has further submitted that a similar issue had come up before the

Honâ??ble High Court of Himachal Pradesh in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Anjana Devi and Ors., Manu/HP/1093/2017, wherein the

said Honâ??ble Court had categorically held that the decision of the larger Bench of the Honâ??ble Supreme Court in the case of Pratap Narain Singh Deo (supra)

would be a binding precedent. Hence, it is submitted that the hereinbefore cited cases of (i) Paresh Narzary (supra), Paltu Sah (supra), and (iii) Gopal Shill (supra) are

not a good law.

16) Having heard the learned senior advocate for the appellant and the learned advocate for the respondent No.1, this Court has perused the materials available on

record. Â

17) Discussion and decision on substantial question of law No. 1:

a. In this regard, it is seen that the respondent No.1 had claimed that he was getting a monthly salary of Rs.1,200/- per month, and in addition, he was also getting a

daily allowance of Rs.100/- per day and, as such, his total monthly wages was Rs.4,200/- per month. However, the learned Commissioner had taken his monthly wages

to be Rs.2,400/- for the purpose of computing compensation.

b. However, the alleged accident of the respondent No.1 had taken place on 05.11.2000. At that point of time, the provisions of Explanation II of Section 4(1) of the

Workmenâ??s Compensation Act, 1923 prescribed that the monthly wages w.e.f. 15.09.1995 to 17.12.2000, for the purpose of computing compensation was Rs.2,000/-

only.

c. Their Lordships of the Honâ??ble Supreme Court in the case of Kerala State Electricity Board Vs. Vasala, (1999) 0 Supreme(SC) 1042: (1999) 8 SCC 254, had held

that Section 4 and 4-A of the Workmen's Compensation Act, 1923 as amended in 1995 would not apply retrospectively. In view of the said ratio, the amendment brought about vide Act 46 of 2000 w.e.f. 08.12.2000 cannot have retrospective effect.

d. Therefore, the substantial question of law No.1 is answered in the negative and in favour of the appellant by holding that the salary which could be taken for computation of compensation was Rs.2,000/-, even if the respondent No.1 was getting more monthly wages and, as such, the computation of award passed by the

learned Commissioner, Workmen's Compensation, is not in accordance with the provisions of the Workmen's Compensation Act, 1923.

18) Discussion and decision of substantial question of law No. 2:

a. The issues No.1 and 2 as decided by the learned trial Court is taken up first.

The said issue relates to whether there is any cause of action and whether the claim petition was maintainable. In this regard, the learned Commissioner had held that

the ejahar submitted by the driver and the other medical documents fully established that due to injuries sustained by the respondent No.1 in the accident of

05.11.2000, he had become unemployed, which could not be denied. While this Court is of the considered opinion that as there was an accident, which is stated to

have caused personal injury to the respondent No.1, there was cause of action for the claim and the claim petition was maintainable as the respondent No.1 was

under employment of the respondent No.2 in respect of his vehicle at the time of the accident. However, without appreciating the evidentiary value of the deposition

by PW-1, the learned Commissioner could not have held that the ejahar submitted by the driver and the other medical documents fully established that due to injuries

sustained by the respondent No.1 in the accident that had occurred on 05.11.2000, or that the respondent No.1 had become unemployed. The said finding is neither

relevant, nor sustainable while deciding issues No.1 and 2. Nonetheless, the issues are decided in the affirmative and in favour of the respondent No.1.

b. Issues No.3 and 4, as decided by the learned Commissioner are taken up now. The said issues are whether the appellant and respondent No.2 are liable to pay

compensation to the respondent No.1 and to what reliefs the respondent No.1 was entitled to.

c. In this regard it is seen that there is no finding by the learned Commissioner that the injuries suffered by the respondent No. 1 had caused permanent partial disablement, so as to entitle the respondent No.1 to compensation under Section 4(1)(c) of the Workmen's Compensation Act, 1923.

d. There is also no finding that the respondent No. 1 had suffered temporary disablement, either total or partial, resulting from the injury, so as to entitle the respondent No.1 to compensation as per the provisions of Section 4(1)(d) of Workmen's Compensation Act, 1923.

e. It is seen that in his cross examination, the respondent No.1 has stated that he did not know where the original injury report was lying. He had further stated that he

did not file any medical certificate for his treatment for 6 (six) months after returning from hospital. He had further stated in his cross examination that he had no

certificate that his finger had no strength or that his finger was not cured. He also did not have any certificate that he was having pain in his chest from time to time.

f. In respect of issue No. 4, the learned Commissioner had held that - Although no amputation was done, the petitioner submitted relevant medical documents

including Certificate issued by Doctor of Dhubri Civil Hospital. Although no percentage of disability mentioned in the certificate on perusal the documents and the

Injury Certificate it reveals that the petitioner sustained multiple injuries and some injuries are grievous in nature for which middle finger of the right hand became

functionless and the right hand became functionless and the right hand of the petitioner is also became weak for normal work and led to unemployment since the date

of accident. The Court is also convinced and decided to assess 35% disability by keeping the judicial mind backed by basis of related factors, genuinity as

empowered by the provision of Act.

g. On perusal of LCR, it is seen that the respondent No.1 had filed his claim petition on 12.10.2001 along with 5 (five) documents by way of Firistia, being (i) copy

of the FIR, (ii) copy of insurance policy, (iii) copy of the conductor's licence, (iv) copy of the discharge of Civil Hospital, Dhubri, and (v) copy of notice served under Section 10 of W.C. Act.

h. Except for copy of notice under Section 10, the copies of all other documents were received back by the learned advocate for the respondent No. 1 on 08.04.2008.

These documents along with other were filed before the learned Commissioner on 08.04.2008, being (i) Copy of FIR, (ii) Copy of injury report signed on 06.11.2000, (iii)

Discharge slip issued by the Civil Hospital, Dhubri, (iv) Advice slip for patient, (v) Copy of conductor's licence, (vi) Copy of driving licence, (vii) Copy of insurance policy, (viii) Copy of Registration Certificate of vehicle.

i. On 08.04.2008, the respondent No.1 examined himself as PW-1 and he was cross-examined and discharged on the same date. A petition was filed by the respondent

No. 1 with a prayer to tag the record of W.C. Case No. 51/2001, which was disposed of on 18.07.2007 so as to prove certain original documents tagged with the said

case record. However, the order No. 31 dated 08.04.2008, passed by the learned Commissioner reads as follows - "Evidence of the claimant is completed today and

fixed for D/W and objection and objection hearing on 06.05.2008." The LCR does not show any order to call for and for tagging the records of W.C. Case No. 51/2001.

j. It is seen that none of the exhibits available in the record are in original.

k. On a perusal of the injury report (Ext.4), it is seen that four injuries are mentioned herein, with comments, viz.,-

1. Incised injury on dorsum (sic) of right index finger (3X1/2x1/4 cm) with bleeding.

2. Incised injury on dorsum (sick) of right middle finger (2x1/2x1/4 cm) with bleeding.

3. Cut injury on left upper part of chest (3x1/2x1/2 cm) with bleeding.

4. Abrasion on forehead (2x1/2 cm).

Comments- "In my opinion, the above mentioned injuries are simple in nature and fresh in onset. All injuries except No. 4 are caused by sharp edged weapon and

injury No. 4 is caused by blunt force impact.â??

l. In the claim petition filed on 12.10.2001, the nature of injuries are not mentioned. In paragraph 5 thereof, it is stated that the â??â? injury caused to the petitioner,

made him permanently disabled causing irreparable loss to him. Even after long treatment his disablement has not been cured.â??

m. Therefore, in the absence of examination of any doctor, when the injury report itself does not reflect that the injuries are grievous in nature, there was no material

available before the learned Commissioner, Workmenâ??s Compensation to hold that the injuries are grievous in nature or that the middle finger of the right hand as

well as right hand itself had become functionless and that the right hand of the petitioner become weak for normal work. Hence, the assessment of 35% disability is

not borne out of the injury report (Ext. 4). The discharge slip (Ext. 5) available merely mentions about the dimensions of multiple incise wound following attack by

dacoits. In the advise slip (Ext.10), issued by the Civil Hospital, Dhubri, dated 23.03.2004, it is mentioned that â??it was an old case of multiple injuries (heal), now

pain, headache etc.â? Therefore, there is no medical document on record indicating any permanent injury or disability, which could have resulted in assessment of

35% of disability by the learned Commissioner. In the light of the medical advice slip dated 23.03.2004 (Ext. 8 to 10), which records healed-up injuries, but the

respondent No. 1 was only having pain and headache, the finding of fact recorded by the learned Commissioner to hold that (1) middle finger of right hand became

functionless, (2) right hand became functionless, (3) the right hand of petitioner has become weak for normal work, (4) the right hand of petitioner has become weak

for normal work, and (5) assessment of 35% disability, are without any substantiated medical evidence on record.

n. In view of the discussions above, this Court if of the considered opinion that in the absence of examination of any medical practitioner, the findings of the learned Commissioner, Workmenâ??s Compensation are not found to be sustainable on

the basis of evidence on record.

o. Therefore, this Court is of the considered opinion that the decision of the learned Commissioner on the issues No. 3 and 4 are not sustainable. In the absence of

any medical document substantiating the findings recorded by the learned Commissioner in respect of the nature of the injury as well as the disability suffered.

p. In view of the discussions above, this Court is constrained to hold that without examining any medical practitioner, the assessment of 30% disability of respondent

No.1 by the learned Commissioner of his own on the basis of a injury certificate (Ext.4, 5 and 10), where there is no mention of any percentage of disability is not sustainable on facts and in law. The substantial question of law No.2 is answered accordingly.

q. Accordingly, on the basis of evidence on record, the respondent No.1 is not found to be entitled to any compensation under Section 4(1)(c) of the Workmen's

Compensation Act.

19) In view of above, as this Court finds that the compensation awarded by the learned Commissioner to the respondent No.1 is not sustainable on facts and in law,

there is no necessity to decide the substantial question of law No.3, as the decision would only be academic.

20) This Court finds that there is no dispute that the respondent No.1 had suffered attack by dacoits while in employment of the respondent No. 2 along with several

occupants of that vehicle and had suffered stab injuries, which is in course of and arising out of employment under the respondent No.2. Moreover, the provisions of

Workmen's Compensation Act, 1923 (now Employees' Compensation Act, 1923) is a beneficial legislation, therefore, notwithstanding, that in view of the

evidence on record, the decision of the learned Commissioner on issues No.2 and 3 and 4 are not found sustainable, but there is sufficient evidence that injuries were

suffered by the respondent No.1.

21) Under the circumstances, by relying on the ratio laid down by the Hon'ble Supreme Court in the case of Golla Rajanna Vs. Divisional Manager & Anr., (2017) 1

SCC 45: (2016) 0 Supreme(SC) 920, wherein their Lordships had held that the Commissioner of Workmen's Compensation is the last authority on facts, this Court

is inclined to remand the matter back to the Commissioner, Employees Compensation, Dhubri to decide the matter afresh by affording opportunity to the parties to

lead fresh evidence. If required, it shall be open to the learned Commissioner to refer the respondent No.1 to any Medical Colleges in the State of Assam, with a

request to the Principal to constitute a Medical Board of Orthopedic Doctors to examine the respondent No.1 and send a report to the Commissioner for enabling the

learned Commissioner to decide just and fair compensation to the respondent No.1 in accordance with law. The order of remand is in accordance with the provisions

of Order XLI Rule 23-A CPC.

22) Hence, this appeal stands allowed. Resultantly, the impugned judgment and award dated 30.09.2008, passed by the learned Commissioner, Workmen's

Compensation, Dhubri in W.C. Case No. 50/2001 is set aside. The matter is remanded back to the learned Commissioner, Employees Compensation, Dhubri to decide

the matter afresh on terms as indicated above.