
(2019) 01 GAU CK 0072
In the Gauhati High Court
Case No : MFA No. 100 Of 2003

United India Insurance Co.Ltd

APPELLANT

Vs

Bharat Hazarika And Ors

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Workmen's Compensation Act, 1923 — Section 2(n)(c), 22, 30

Citation : (2019) 01 GAU CK 0072

Hon'ble Judges : Ajit Borthakur, J

Bench : Single Bench

Advocate : S Dutta, N Deka

Final Decision : Partly Allowed

Judgement

[1] Heard Mr. VK Baruah, assisted by Mr. K.K. Dey, learned counsel appearing on behalf of the opposite party No. 2/ appellant herein and Mr. N. Deka, learned counsel for the claimant/respondents.

[2] This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (for short, 'the Act') directed against the judgment and award, dated 03.02.2003, passed by the learned Commissioner for the Workmen's Compensation, Nagaon in N.W.C. Case No. 101/2001, whereby the claimant/respondent No. 1 was awarded compensation of Rs. 1,06,258/- with interest @ 12% per annum, with effect from 05.05.2001, on account of injuries sustained in a motor vehicular accident, in course of his employment as handyman in the vehicle.

[3] The appellant's case, in a nutshell, is that the respondent No. 1 herein was serving as a handyman in the vehicle No. AS 02 9600. The respondent No. 2 was the registered owner of the said vehicle and the appellant/ United India Insurance Co. Ltd. was the insurer of the said vehicle. On 08.02.2001 at about 1.30 p.m., while the claimant/respondent No. 1 was under the employment of the respondent No. 2 and the vehicle was driven from Nagaon to Hojai along the

36 National High Way with passengers on board, met with an accident, the respondent No. 1 sustained multiple grievous injuries particularly on his right forearm, wrist and chest. The injured claimant was shifted to Jamunamukh and thereafter, to Nagaon Civil Hospital for treatment. As a result of the injuries sustained, he became unfit to carry the job of handyman. At the time of the accident, the claimant/ respondent No. 1 was aged about 22 years and he was drawing a monthly wage of Rs. 2,200/-. The fact of the accident was intimated to the owner of the vehicle, but to no avail. The respondent No. 1 became out of employment and therefore, he filed a petition claiming compensation of Rs. 2,00,000/-with interest against both the respondent No. 2, the owner of the vehicle and the appellant/ United India Insurance Co. Ltd.

[4] The respondent No. 2 admitted the fact of accident, nature of employment, age and income of the claimant in his written statement.

[5] The appellant/ United India Insurance Co. Ltd. contested the proceeding, on the grounds, interalia, that there was no cause of action; that the petition was not presented complying the provisions of the Act; that the claimant was not an employee of the respondent No. 2 in respect of the vehicle; that the vehicle did not meet with any accident, and that the claimant did not sustain any injury.

[6] In view of the above pleadings, the learned Commissioner, Workmen's Compensation, Nagaon framed the following issues in order to arrive at a just decision in the proceeding:-

1. Whether there is any cause of action for the claim and if so, whether the petition is maintainable in its present form?
2. Whether the applicant is a workman as defined in the WC Act, 1923?
3. Whether the applicant sustained injuries in course of and arising out of his employment under the O.P. No. 1?
4. Whether the applicant is entitled for compensation and if found affirmative, to what extent?

[7] The claimant examined 2 (two) witnesses including himself. The contesting appellant did not adduce any evidence.

[8] Mr. V.K. Baruah, learned counsel for the appellant/ United India Insurance Co. Ltd., submitted that the insurance policy issued in favour of the respondent No. 2, the registered owner of the vehicle, did not cover liability against the handyman of the vehicle as the liability covered only against the driver and the conductor. Mr. Baruah further submitted that the learned Commissioner relied on the evidence of the doctor and erroneously assessed the loss of earning capacity of the claimant/ respondent No. 1 as 40% as keeping consideration of the nature of occupation, the loss of earning capacity cannot be more than physical disability of 20%. Mr. Baruah also submitted that the learned Commissioner awarded exorbitant interest @ 12%, per annum.

[9] Per contra, Mr. N. Deka, learned counsel appearing on behalf of the claimant/ respondent No. 1, submitted that the Insurance Company did not take the plea of non-coverage of the policy in question in respect of the claimant, who was the handyman of the vehicle. According to Mr. Deka, under Section 30 of the Act, an appeal against the award of the Commissioner lies on substantial questions of law and therefore, as the award was passed after appreciation of evidence from proper perspective, there is no scope in law to interfere in the impugned order. Mr. Deka also submitted that the questions of law raised by the appellant being wholly dependent on facts, this court may be persuaded by the findings arrived at by the learned Commissioner.

[10] I have given due consideration to the above arguments advanced by the learned counsel of both sides and perused the records.

[11] A perusal of the impugned judgment and order, dated 03.02.2003, it transpires that the learned Commissioner, Workmen's Compensation, Nagaon, Assam answered all the issues in the affirmative. The learned Commissioner observed that upon consideration of the rival contentions made by the parties, there arose a cause of action for the claim petition and the same was presented as per requirement of Section 22 of the Act and accordingly decided the issue No. 1 in the affirmative. So far the issue No. 2 is concerned, the learned Commissioner, basically in view of Section 2(n)(c) of the Act, defining 'workman' coupled with the oral testimony of the claimant, accident information report, decided the issue in the affirmative holding that the claimant was a workman. Regarding the issues No. 3 and 4, the learned Commissioner observed that as the claimant workman sustained injuries by accident, in course of his employment as a handyman under the respondent No. 2, the registered owner of the vehicle, he is entitled to adequate compensation on the basis of his monthly income, age factor and loss of earning capacity to the extent of 40% and assessed the compensation as stated above. The learned commissioner observed that the contesting Insurance Company/ appellant herein did not advance any specific case of defence in the written statement, which was only formal in nature.

[12] It is noticed that the appellant/ Insurance Company in its written statement did not specifically plead that the insurance policy in question did not cover the risk of the handyman, which is agitated in the instant appeal for the first time. The appellant neither called the employer as a witness nor cross-examined the claimant/ respondent No. 1 workman on this new issue. The record shows that the employer/ respondent No. 2 in his written statement categorically admitted the facts made by the claimant workman, and the claimant through his evidence established his claim, based on which the learned Commissioner passed the impugned award of compensation and as such, there is no scope for the appellate court to interfere therein, on this count.

13. With regard to the second ground of appeal that the learned Commissioner, Workmen's Compensation wrongly assessed the loss of earning capacity of the

claimant at 40% by placing reliance on the medical evidence, it is noticed that the appellant/ Insurance Company did not plead anything to the contrary in its written statement. In this regard, I have perused the evidence of P.W. 2, Dr. Praneswar Das, the doctor, who examined the claimant/ respondent No. 1, on 08.02.2001 at B. P. Civil Hospital, Nagaon and recorded the following injuries on his person-

"1. Multiple abrasions and Lacerations over scalp and both hands and legs.

2. Pain and swelling over the right wrist joint.

3. I further advised him to get X-ray on right forearm including wrist A.P. and Rat view. The X-ray report No. 97/-1, dated 9.2.01 of the Civil Hospital, Nagaon indicated fracture of lower of radius and styloid process of ulna"

14. The doctor (P.W.2) held the opinion that the injury No. 1 is simple and injury No. 2 is grievous in nature. The doctor further stated that the injured/ claimant's treatment continued from 03.02.2002 at the Civil Hospital and at his private chamber. The doctor found that he developed osteo-arthritis at wrist joint with limitation of the movement which made 20% disabled resulting in loss of his earning up to 40%. The doctor has identified Ext. 3, the injury report. In cross-examination, the doctor stated that the disability of 20% may vary by 5% on either side, as there is no specific scale to measure the disability, and in case of labour type job, the disability may rise to 50%. The earning capacity of the claimant reduced by 40%. It is noticed that the appellant/ Insurance Company has not cross-examined the doctor on the injuries he found on the person of the claimant/ injured. On the other hand, on scrutiny of the evidence of P.W.1 (the claimant) and P.W. 2 (the doctor), it is found that the claimant/ injured was aged about 22 years at the time of the accident. He (P.W.1) stated that his monthly wage was Rs. 2,000/-. The respondent No. 2/ employer in his written statement admitted that his monthly wage was Rs. 2,000/-. The monthly wage of Rs. 2,000/-, being the minimum wage that cannot be disbelieved. The learned Commissioner's calculation of compensation in break up, as is given in the impugned judgment and award, is extracted hereinbelow:-

" 1. Monthly income - Rs. 2,000/-

2. Age factor - 22 years (22.01.73)

3. Loss of earning capacity - 40%.

Thus, the equation is 40% of Rs. 1200x221.37= Rs. 1,06,257.60.

The amount is rounded off to Rs. 1,06,258.00 (Rupees One Lakh Six Thousand Two Hundred Fifty Eight) only."

[15] The evidence of doctor (P.W.2) specifically shows the nature of injuries which supports the evidence of the injured/claimant and so also the consequential approximate loss of his earning capacity as estimated by the doctor (P.W.2). Thus, the compensation so calculated by the learned

Commissioner, Workmen's Compensation being in accordance with law, no interference is called for.

[16] So far the interest part is concerned, the learned Commissioner, Workmen's Compensation has determined it @ 12% per annum. Award of the rate of interest on the awarded amount is discretionary. It is a non-fatal injury case. Therefore, the award of interest @ 12% per annum on the awarded principal amount appears to be exorbitant and excessive. Hence, the interest rate is reduced to 9%, per annum. The other terms and conditions of the award are, however, not liable to be modified.

Accordingly, the appeal stands partly allowed.

Send back the record alongwith a copy of this judgment and order.