

(2015) 10 GAU CK 0017
In the Gauhati High Court
Case No : MFA No. 59 of 2007

United India Insurance Company

APPELLANT

Vs

Mozzamel Haque and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

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

Citation : (2015) 4 GLT 864

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : R.D. Mojumder, Advocate, for the Appellant

Judgement

Nishitendu Chaudhury, J.—In this appeal under Section 30 of the Workmen's Compensation Act, 1923 (now named as Employees' Compensation Act, 1923 and hereinafter referred to as "the Act"), the insurance company, as appellant, has challenged the judgment and award dated 08.09.2006, passed by Workmen's Compensation Commissioner, Dhubri in W.C. Case No. 16/2005 thereby directing the insurance company to make payment of compensation to the tune of Rs. 2,99,491/- within a period of 30 days. The insurance company immediately thereafter made a deposit with the jurisdictional W.C. Commissioner and thereafter has preferred this appeal and this court while admitting the appeal on 17.07.2007 framed the following substantial question of law:-

"Whether the computation of compensation made by the learned Commissioner, Workmen's Compensation, Dhubri was in terms of the prescription of Section 4 of the Workmen's Compensation Act, 1925 on the aspect of income of the workman, disablement suffered by him and the consequential loss of earning capacity?"

The facts in brief involved in this appeal is that one Md. Mozzammel Hoque being driver of a truck bearing registration No. AS 01C/0369 belonging to one Chandan Das of Bilasipara was proceeding with the vehicle on 19.01.2005 and met with an

accident at Rangamati as a result of which he sustained grievous fracture in his right hand and got his frontal teeth broken. He also sustained injuries in his chest and wrist. The victim was carried to Chapar P.H.C. for treatment. He was released from the hospital on 22.01.2005 and received further treatment from other physician but because of the disability suffered from the accident, he lost his job and that he could not get any other job. G.D. Entry No. 442 dated 22.01.2005 was registered by Chapar Police Station in regard to the aforesaid accident. Petitioner served notice under Section 10 and thereafter lodged the claim before the jurisdictional W.C. Commissioner. It was also disclosed that the vehicle in question was covered by valid insurance of the present appeal. He stated that he was earning Rs. 3,000/- per month as salary and Rs. 100/- as daily allowance. He claimed to be 30 years of age at the time of accident and demanded Rs. 3,00,000/- as compensation with interest.

2. On being summoned, the OP No. 2 owner of the vehicle appeared and submitted written statement admitting that the workman was engaged by him as driver. The salary and the accident was also admitted by the owner. The O.P. No. 2 claimed that the workman was paid Rs. 1800/- per month as salary in addition to Rs. 50/- as daily allowance.

3. The O.P. No. 1, insurance company submitted a separate written statement and disowned the liability to compensate the workman for the alleged accident. Employment, salary, injury and correctness of the accident was also denied in the written statement.

4. Upon such rival contentions of the parties, the W.C. Commissioner framed the following 4 issues and asked the parties to prove their respective cases.

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.Ps. are liable to pay compensation as claimed by the claimant petitioner?
4. If yes, what relief is the claimant petitioner entitled to?

5. Workman examined himself alone but did not examine any doctor. Insurance company or the owner did not lead any evidence. The W.C. Commissioner placing reliance on the evidence led by the claimant only arrived at the finding that the claimant suffered disablement to the extent of 60% and that he was disabled from working as a driver. Accepting the age of the workman as 30 years and his monthly salary at Rs. 3,000/- along with daily allowance of Rs. 100/- the compensation was computed under Section 4(1)(c)(ii) of the Act at Rs. 2,99,491/-. The insurance company was directed to make payment within a period of 30 days from the date of award.

6. I have heard Ms. R.D. Mozumder, learned counsel for the appellant. According to Ms. Mozumder, the claimant did not examine any doctor before the W.C.

Commissioner but the Commissioner himself assessed the quantum of disability and loss of earning capacity of the workman. The mandate of Section 4(1)(c)(ii) of the Act is that compensation payable to a workman will be proportionate to the disability and resultant loss of earning capacity caused permanently because of the accident and such assessment has to be made on the basis of the assessment of a qualified medical practitioner. In a number of judgments this court held that such assessment has to be done on the basis of the deposition of a qualified medical practitioner. In the case of New India Assurance Co. Ltd. Vs. Sanjit Kumar reported in 2000 (2) GLT 567, this court decided this point holding that unless and until a qualified medical practitioner is examined to assess the loss of earning capacity resulting from the disability caused by the accident, W.C. Commissioner cannot himself make the assessment. The finding as to physical disability by the W.C. Commissioner in this case, therefore, is vitiated for non-consideration of the provision of Section 4(1)(c)(ii) of the Act. This being the position, the sole substantial question of law has to be decided in favour of the appellant and the judgment and award dated 08.09.2006 is required to be set aside. But at this stage, it came to light that the jurisdictional W.C. Commissioner had already disbursed the amount to the workman on 08.01.2007 before the appeal was admitted and stay was granted by this court. This being the position, no useful purpose shall be served by remanding the appeal for re-trial. Consequently, although the sole substantial question of law is decided in favour of the appellant but in view of the development referred to above, the appeal stands closed.