

(2015) 02 GAU CK 0082

In the Gauhati High Court

Case No : Miscellaneous First Appeal No. 6 of 2004

United India Insurance Company Ltd.

APPELLANT

Vs

Abdul Ali and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

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

Citation : (2015) 2 GLT 885

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : A. Sarma, for the Appellant; H. Das, Advocates for the Respondent

Judgement

Nishitendu Chaudhury, J—This Appeal under Section 30 of the Workmen's Compensation Act, 1923, is directed against the judgment and award dated 24.07.2002 passed by the Workmen's Compensation Commissioner, Goalpara in W.C. Case No. 17 of 2000. The appeal has been preferred by the Insurance Company on the sole ground that without there being any deposition by a qualified medical practitioner, the learned Workmen's Compensation Commissioner committed error in assessing the loss of earning capacity of the victim under Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. One Abdul Ali as claimant approached Workmen's Compensation Commissioner (hereinafter referred to as "W.C. Commissioner"), Goalpara, stating that as driver of Maruti Van No. AS 18/4169 while he was driving aforesaid Maruti Van from Goalpara to Dhanubhanga, the vehicle met with an accident on 04.06.2000. The accident was caused due to negligence and reckless driving of a horse cart and in the process the claimant suffered fracture in his cuneiform and cuboid bones of his right feet with soft fissures swelling pitting etc. On being summoned, both owner and Insurer of the vehicle submitted written statements denying the case of the claimant. The learned W.C. Commissioner thereupon framed as many as four issues and relegated the parties to lead evidence. The claimant examined himself as sole witness and proved a medical certificate as

Exhibit-17. The medical certificate given by one S. Rahman only indicates that the claimant had suffered injury at his foot owing to the road traffic accident but the magnitude of the disability or consequential loss of earning capacity is not discernible from the certificate. Yet in the absence of deposition of the doctor and any amount of evidence for ascertaining the loss of earning capacity of the victim, the W.C. Commissioner passed his judgment and award on 24.07.2002 holding that the claimant suffered 40% loss of earning capacity owing to the accident. The amount was quantified at Rs. 1,67,936/- and Insurance Company was directed to make payment of indemnifying the owner of the vehicle.

2. I have heard Mr. A. Sarma, learned counsel for the appellant. I have also heard Mr. H. Das, learned counsel for the claimant.

3. Mr. A. Sarma, learned counsel for the appellant would argue that obviously there was no evidence by any qualified medical practitioner to ascertain the loss of earning capacity of the victim. Even the certificate exhibited as Exhibit-17 is silent about the magnitude of physical disability of the claimant. The W.C. Commissioner took up the cudgel in his own hand and made the assessment by himself merely at the ipse dixit of the claimant. This according to the learned counsel for the appellant is clearly contrary to the law laid down under Section 4(1)(c)(ii) of the W.C. Act, 1923. He has placed reliance on two judgments of this Court as follows:

i) National Insurance Co. Ltd. Vs. Ismaeli (Smt.) and Another, (2011) ACJ 725 : (2009) 2 GLD 646 : (2010) 1 GLT 571

ii) Oriental Insurance Co. Ltd. Vs. Rodingliani and Another, (2006) 1 GLT 399 .

In both these judgments the Hon''ble Single judges held that in the absence of evidence by a qualified medical practitioner W.C. Commissioner himself cannot assess the loss of earning capacity of a claimant.

4. I have perused the judgment and the copy of documents provided by the learned counsel for the parties. I have perused Exhibit-17, medical certificate. Medical certificate is conspicuously silent about the quantum of permanent disability and magnitude of the loss of earning capacity of the injury sustained by the claimant. The judgment shows that WC Commissioner himself made the assessment in contravention of the law laid down by this court in the aforesaid and other judgments apart from clear and unambiguous recital in Section 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. The judgment, therefore, is vitiated by jurisdictional error. It is accordingly set aside.

5. The matter stands remanded to the learned Workmen's Compensation Commissioner, Goalpara, for deciding the matter afresh. In so doing, the WC Commissioner shall afford opportunity to the parties to lead respective evidence so that matter can be properly adjudicated. This is done keeping in view that the Workmen's Compensation Act (now designated as Employment Compensation Act) is a beneficial piece of legislation. It is stated by the learned counsel for the

appellant that full amount was deposited by the Insurance Company with the jurisdictional of W.C. Commissioner at the time of presenting of the appeal. The amount shall not be disbursed if not already disbursed to the workman till the proceeding is taken to its logical end. No order as to costs.