
(2017) 01 GAU CK 0063
In the Gauhati High Court
Case No : MFA No. 12 of 2010

United India Insurance Company Ltd.

APPELLANT

Vs

Shyam Nath

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Workmens Compensation Rules, 1924 — Rule 32(2)

Citation : (2017) 1 GauLT 397

Hon'ble Judges : Mr. Kalyan Rai Surana, J.

Bench : Single Bench

Advocate : Mrs. R.D. Mazumdar, Advocate, for the Appellant; Mr. P.K. Talukdar, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Kalyan Rai Surana, J. (Oral) - Heard Mrs. R. D. Mazumdar, learned counsel for the appellant.

2. By filing this appeal under Section 30 of the Workmen's Compensation Act, 1923 (now renamed as Employees Compensation Act, 1923, hereinafter referred to as the "said Act"), the appellant has challenged the judgment and award dated 02.07.2003, passed by the Commissioner, Workmen's Compensation, Guwahati, awarding compensation of Rs. 93,000/- to the respondent No. 1 together with 9% interest from the date of filing of the claim petition, i.e., 19.08.2002 till realization as well as the order dated 26.07.2007, passed by the Commissioner, Workmen's Compensation, Guwahati, in WC Case No. 190/2002, whereby the prayer for review was rejected. The learned Commissioner, Workmen's Compensation, Guwahati, by the impugned judgment and award dated 02.07.2003 had held that the respondent herein, namely, Sri Shyam Nath, was an employee of the respondent No. 2 herein and working as Handiman on his Bus bearing number AS-15/3576 and that on 22.07.2002, while he was working in the said vehicle, which was coming from Guwahati towards Barpeta,

which met with an accident near Chila Mahe Khetri under Gouripur PS Out Post, as a result of which the said claimant/respondent No. 1 had sustained grievous injuries of his left leg, left shoulder joint, over right face and nose with nasal bleeding. The Commissioner had held that the injuries are deemed to result in permanent partial disablement of the respondent No. 1 by relying on the evidence tendered by PW2, who was the then Senior Medical and Health Officer of Barpeta Road PHC, who had stated that he had examined the injured for the injuries suffered in the accident. The Court relied on the deposition of the said PW2 and accepted his opinion that the injured person/respondent No. 1 had suffered from permanent disablement to the extent of 35% and he had lost his earning capacity of 30% due to the injuries sustained in the accident. The learned Commissioner had also relied on the evidence of PW1 as regards his injuries and income capacity and considering the age and the wages earned by the respondent No. 1, determined the compensation @ Rs.93,000/- only. It was held that the respondent No. 2 herein, being the employer, was liable to pay the compensation, but as his vehicle was duly injured by the appellant herein, directed the payment of compensation by the appellant for and on behalf of the respondent No. 2 herein. The learned Commissioner further ordered the appellant to pay simple interest @ 9% on the awarded compensation w.e.f. 19.08.2002, being the date of filing of the claim petition till the date of payment.

3. Learned counsel for the appellant relies on report given by the Chief Investigating Officer, CBI, wherein it is stated that the accident, involving Bus No. AS-15/3576, which occurred on 22.07.2002, had occurred at Jaiguru (Silamahekhatee) under Gouripur Out Post of Kamalpur PS and the said bus had knocked down one Truck bearing No. BR-06/DB155, which was parked on the side of the road and in the said accident, 5 passengers, 3 male and 2 female, had died on spot and 27 numbers of injured person were admitted at Gauhati Medical College & Hospital, Guwahati and that out of those 27 numbers of injured persons, 3 more people had succumbed death at the hospital due to the injuries. The said report also contained the particulars of the deceased persons as well as particulars of the injured persons, and that the name of the respondent No. 1 was not found to be mentioned in the said list.

4. It is submitted that it is from the said police report that the appellant could gather that the impugned judgment and award was vitiated by fraud and under such circumstances, when they could collect the said report, the appellant had moved the Court of Commissioner of Workmen's Compensation, Guwahati, by filing an application for review of the judgment and order dated 02.07.2003 passed in WC Case No. 190/2002 and the said application was rejected by order dated 27.06.2007 by the learned Commissioner, Workmen's Compensation, Guwahati, by holding that under the provision of Rule 32 (2) of the Workmen's Compensation Rules, the Court cannot alter or add anything once the judgment is signed other than the correction of a clerical or arithmetical mistake, thereby rejecting the said review application. Therefore, aggrieved by the said two orders passed by the learned Court below, the appellant has preferred this appeal.

5. Learned counsel for the appellant places reliance on the case of United India Insurance Company Limited v. Rajendra Singh and others, reported in AIR 2000 SC 1165. In the said case, 2 persons had claimed compensation in respect of motor accident, which had happened on 09.11.1993 and later on, the Insurance Company got an information that the accident had happened not as projected therein, being an accident between motor cycle and an ambassador car, but the accident had occurred while they were operating their own tractor, it jugged into a ditch and in the jerk the occupants of the tractor slipped down and sustained injuries. On revelation of the said facts, the Insurance Company had dismissed the application for recalling of the award and the High Court had dismissed the writ petition filed by the Insurance Company. Under the said context, the Hon'ble Supreme Court of India, by relying on the case reported in (1994) 2 SCC 1 and (1996) 5 SCC 550 had held that the remedy to move an application for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree cannot be foreclosed in a such situation and further held that no Court or Tribunal can be regarded as powerless to recall its own order if the order was wangled through fraud or misrepresentation as it would affect the very basis of the claim. It was further held that if the Court failed to afford to the Insurance Company an opportunity to substantiate their contentions, it might certainly lead to serious miscarriage of justice and thereby allowing the appeal by quashing the impugned orders and the award, directing the Tribunal to consider afresh after affording a reasonable opportunity to the Insurance Company to substantiate their allegation.

6. Therefore, in relying on the ratio of the Hon'ble Apex Court in the above mentioned case, this Court is of the view that as the appellant has discovered with the award as has been based on a fake claim that in had taken recourse to the correct process of approaching the Commissioner, Workmen's Compensation, Guwahati, for recalling the impugned judgment and award. This Court is further of the view that fraud vitiates the very judgment, which has been founded by the practise of fraud upon the Court. This Court is also conscious about the observations made by the Hon'ble Supreme Court in the case of SP Chengalvaraya Naidu (Dead) by LRs v. Jagnnath (Dead) by LRs reported in (1994) 1 SCC 1, which has been referred in the case of United India Insurance Company (supra), that "fraud avoids all judicial acts, ecclesiastical or temporal" and it is the settled proposition of law that a judgment and decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law and the it was further held that such a judgment and decree by the First Court or by the highest court has to be treated as nullity by every Court, whether superior or inferior and it can even be challenged in any Court even in collateral proceedings.

7. Abiding by the said ratio, the impugned judgment and award dated 02.07.2003 and 26.07.2007 passed by the Commissioner, Workmen's Compensation, Guwahati, in WC Case No. 190/2002 is hereby set aside and quashed. The matter is remanded back to the learned Commissioner, Workmen's Compensation, Guwahati, to consider the claim of the claimant afresh after

affording a reasonable opportunity to the appellant/Insurance Company to substantiate their allegation and also by affording an opportunity to the claimant to rebut the allegations. This Court makes it clear that while disposing of the claim afresh, the learned Commissioner, Workmen's Compensation shall not be influenced by any observations made in this appeal.

8. The appeal, therefore, stands allowed with no order as to cost.

9. It shall be open for the appellant to file appropriate application before the Court of learned Commissioner, Workmen's Compensation for refund of the awarded amount deposited before it.