

(2015) 02 RAJ CK 0069
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 68/2012

United India Insurance Company Ltd.	Vs	APPELLANT
Ummed Khan and Others		RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

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

Citation : (2015) 02 RAJ CK 0069

Hon'ble Judges : Atul Kumar Jain, J.

Bench : Single Bench

Advocate : Tripurari Sharma, for the Appellant; Ram Singh Rathore, Advocates for the Respondent

Judgement

Atul Kumar Jain, J.—In this appeal United India Insurance Company has challenged the award dated 17.11.2011 which was passed by the Commissioner (Employee's Compensation) Jaipur District Jaipur in WCC/NF/230/2009 in favour of Ummed Khan who is respondent No. 1 before us.

2. Medical Certificate of permanent disability submitted by Ummed Khan before the Commissioner mentions that because of the fracture Ummed Khan is unable to walk or stand or climb. 28.4% permanent disability was mentioned by the doctor giving the certificate. On the basis of 28.4% permanent disability caused to Ummed Khan who was helper/Khalasi on a truck. The Commissioner assessed loss of his earning capacity also as 30%.

3. It has been argued in this court by the appellant that loss of earning capacity was to be assessed only by the doctor and not by the Commissioner. It has also been argued on behalf of the appellant that unless the doctor is examined before the Commissioner, his certificate of permanent disability will be inadmissible in evidence and on this point the award should be quashed and the matter should be remanded to the Commissioner for re-hearing of the matter.

4. Appellant seeks help from the following rulings;

"(1) Rajesh Kumar @ Raju Vs. Yudhvair Singh and Another, In this case the alleged Permanent Disability Certificate submitted by the claimant was suspicious, it was obtained after two years of accident, it was not proved that the Civil Surgeon who issued the certificate had treated the injured or not and it was also doubtful that the said Civil Surgeon was competent to issue it or not.

In the circumstances, in absence of the examination of the concerned doctor. Hon"ble the Apex Court thought it fit not to rely upon such a suspicious certificate.

(2) National Insurance Co. Ltd. Vs. Mubasir Ahmed and Another, . In the opinion of the doctor loss of earning was assessed in proportion to the permanent disablement of the claimant but the High Court without indicating any reason or basis held that there was 100% loss of earning capacity. The Apex Court held that such an order of the High Court could not be maintained.

(3) New India Assurance Company Limited Vs. Bharat Yadav alias B.P. Yadav and Another, . In this case it was held by the Calcutta High Court that the Medical Practitioner failed to assess loss of earning capacity of the claimants and so the Commissioner was held not entitled to assess the actual loss of earning capacity of claimant to the extent of 100%. It was held that for the purpose of calculating the compensation, it is incumbent upon the Commissioner to assess actual loss of earning capacity.

(4) Divisional Manager, United India Insurance Co. Ltd. Vs. Bhagaban Das and Another, In this case Orissa High Court held that in view of the specific requirement of the provision of Section 4(1)(c)(ii) of the Employee's Compensation Act 1923, loss of earning capacity of a "Workman" is to be assessed by a qualified Medical practitioner and it cannot be said to be a mere formality. The qualified Medical Practitioner also cannot assess the loss of earning capacity in his guess work but he should look into the nature of injuries, the percentage of Physical Disability, the capacity of the injured to perform the work with specific reference to the type of work he was engaged in and other such factors to come to a finding with regard to the loss of earning capacity. In that view of the matter, in absence of the evidence of the doctor in that regard it is not permissible for the court to find out only from the evidence of Physical Disability, the extent of loss of earning capacity. Commissioner (WC) in the present case at hand having assessed the loss, without any specific evidence of the doctor, as required under law, the award was held not sustainable by Orissa High Court in the matter.

(5) National Insurance Company Ltd. v. Jitendra Kumar and Anr. Civil Misc. Appeal No. 2473/2004 decided by this court on 21.01.2014 In this case it was held that the certificate of disability to be admissible in evidence must be proved by the doctor issuing it by entering into the witness box. Circular No. 2/F/16(5)/Medical Health/2/1998 dated 30.8.2010 issued by the Government of Rajasthan Medical and Health Group 2 Department Circular dated 21.8.2010, Circular dated

25.5.2010 and letter dated 21.01.2011 of Government of Rajasthan have also been relied upon by the appellant in which it was mentioned that Certificate of Permanent Disability cannot be given by each and every doctor unless authorised by the Government and particularly doctors of Dhanvantary Hospital Mansarovar, Jaipur were debarred to issue any such certificate."

5. In the case in hand the Permanent Disability Certificate of Umed Khan was issued by Doctor Suresh Agarwal M.S. (Ortho.) registration No. 986/003585 who was a doctor of Jaipur (Ortho. Care and General Hospital) B68/10B Scheme Gopalpura Bypass, Jaipur.

6. In the circumstances of the case and looking to the circulars issued from time to time by Government of Rajasthan in Medical and Health Department, it would have been better if the doctor issuing the Medical Certificate of Permanent Disability would have been examined as a witness by the Commissioner so that the opportunity of Cross Examination would have been given to the appellant by the Commissioner. In the circumstances of the case, the award dated 17.11.2011 passed by the Commissioner (EC) Jaipur District I, Jaipur in the present matter is hereby quashed.

7. Both parties are directed to appear before the said Commissioner on 24.03.2015 at 10.30 a.m. Claimant Umed Khan, will preferably try to submit Permanent Disability Certificate issued by an authorized Government doctor or at least he should produce doctor Suresh Agarwal as a witness before the Commissioner and the Commissioner is directed to examine the said Medical Witness on the point of Permanent Disability as well as on the point of loss of earning capacity of the claimant and then the Commissioner would be supposed to pass a fresh award without being influenced by the award dated 17.11.2011.

8. Copy of this order be sent to the concerned Commissioner immediately.