



GAHC010106772010

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/235/2010

NATIONAL INSURANCE CO.LTD.
A PUBLIC SECTOR UNDERTAKING HAVING ITS REGIONAL OFFICE AT 3,
MIDDLETON STREET, KOLKATA-700071 AND REGIONAL OFFICE AT G.S. ROAD,
BHANGAGARH, GUWAHATI-781005, REPRESENTED BY ITS REGIONAL
MANAGER, GUWAHATI.

VERSUS

MD.ABDUL RAFIQUE and ANR
S/O LATE ABDUL KHALEQUE, VILL. FULTOLA, P.S. TEZPUR, DIST. SONITPUR,
ASSAM.

2:MD. SOFIQUL ISLAM CHOUDHURY

S/O LATE A. CHOUDHURY
R/O GARUWANPATTY
TEZPUR
DIST. SONITPUR
ASSAM. OWNER OF THE VEHICLE

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner : Ms. S. Roy, Advocate.

Advocates for respondent : XXX

Date of hearing : 21.09.2023

Date of judgment : 21.09.2023

Heard Ms. S. Roy, learned counsel for the appellant-Insurance Company which has preferred the present appeal under Section 30 of the Workmen's Compensation Act 1923 (presently Employees Compensation Act, 1923). The said appeal has been preferred against a Judgment and Award dated 05.04.2010 passed by the learned Commissioner, Workmen's Compensation, Tezpur in Workmen's Compensation Case No. 07/2008 by which a sum of Rs.2,47,140/- (Rupees Two Lakh Forty Seven Thousand One Hundred Forty) has been awarded.

2. This Court while admitting this appeal vide order dated 06.08.2010 had formulated the following two substantial questions of law.

- 1. Whether the injury sustained by the claimant not being one as specified in Schedule I part II of the Workmen's Compensation Act, 1923 and there being no evidence and finding at all to show that the alleged disablement of the claimant reduces his earning capacity in every employment which he was capable of undertaking at the time of accident, the learned Commissioner was justified in granting compensation in accordance of the provisions of Section 4 (1) (c) (ii) of the Act.*
- 2. Whether the Medical Practitioner having purportedly assessed the loss of earning capacity of the claimant at 50 % without due regard to the percentage of loss of earning capacity in relation to the injuries specified in Schedule-I of the Workmen's Compensation Act, 1923, the learned Commissioner has been justified in acting upon the said purported assessment and granting compensation under Section 4 (1) (c)(ii) of the Act.*

3. The claim was instituted by the respondent no. 1 as claimant under Sections 3 & 4 of the Act for injuries sustained by him in a motor vehicles accident arising in the course of his employment with the respondent no. 2. It is the case of the claimant that he used to work as a driver in a vehicle bearing No. AS-12E/0392 (Cruiser) under the respondent no. 2 for transporting passengers and was paid a monthly salary of Rs. 4000/- (Rupees Four Thousand) and a daily allowance of Rs. 50/-. The claimant had stated that he was 23 years of age at the time of the accident which had occurred on 30.05.2007 at Senchowa in the district of Nagaon. In the said accident, the claimant had sustained multiple grievous injuries on his left leg, hip joint and other parts of the body. The claimant has also submitted that he had suffered permanent partial disablement because of the accident and as no compensation was paid, the instant application was filed with a claim of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand). The connected police case was registered as Haiborgaon T.O.P. GDE No. 848 dated 30.05.2007. It is also the case of the claimant that the vehicle in question had a valid insurance cover.

4. The present respondent no. 2 who was the Opposite Party No.1 (owner) had appeared before the Commissioner and had filed written statement wherein most of the factual aspects were admitted. There was clear admission of the claimant being an employee, his salary etc. It was only the aspect of daily allowance which was denied and other aspects were mostly admitted.

5. The Insurance Company - present appellant which was arrayed as Opposite Party No. 2 had however denied the claim including the fact of employment.

6. The claimant had adduced evidence as PW1 and the second witness PW2 was Dr.



Munin Borkataky, the physician who was consulted by the claimant and who had also issued the Disability Certificate. In the evidence recorded, it clearly came out that the claimant was not in a position to perform duties as driver due to the injuries sustained and the pain he was suffering on his left leg and hip. The contesting opposite parties before the Commissioner however did not adduce any evidence.

7. The learned Commissioner, as indicated above, after hearing the parties had made the award for an amount of Rs. 2,47,140/- (Rupees Two Lakh Forty Seven Thousand One Hundred Forty) with interest @ of 12% from the date of issue of the order.

8. Ms. Roy, the learned counsel for the appellant has submitted that though the compensation has been assessed and directed to be paid by invoking the provisions of Section 4 (1) (c) (ii), the conditions precedent are apparently absent. By referring to Schedule 1 of the Act, the learned counsel has submitted that none of the specified injuries would cover the injuries alleged to have been suffered by the claimant in the instant case and therefore, the aforesaid provision of law could not have been taken recourse to while making the assessment for compensation. The learned counsel has also drawn the attention of this Court to the cross examination part of the PW2, Dr. Munin Borkataky who admitted that he was not an Orthopaedic Surgeon and yet had issued the Disability Certificate. The learned counsel contends that a Disability Certificate can be issued only by an authorized body and not by any Doctor who had privately examined the patient. She further submits that to be eligible and entitled for compensation under the aforesaid provision of Section 4 (1) (c) (ii), there has to be permanent partial disablement which does not appear to be present in the instant case.

9. The learned counsel has also relied upon the case of ***National Insurance***

Company Ltd vs. Bimal Nath & Ors. reported in **2009 (1) GLT 370**. In the said case, this Court on noticing that the conditions precedent under Section 4 (1) (c) (ii) were not present, had remanded the matter for a consideration under Section 4 (1) (d).

10. None of the respondents have appeared or contested this appeal and in this connection, reference may be made to the order dated 13.12.2017 passed by this Court wherein service upon the respondent nos. 1 & 2 was treated to be complete.

11. The contentions advanced by Ms. Roy, the learned counsel for the appellant-Insurance Company has been duly considered and the materials placed before this Court including the LCR have been examined. This Court has noticed that though two substantial questions of law were framed in this appeal, none of the points leading to formulating of such substantial question of law were raised by the present appellant before the Commissioner. So far as the provision of law contained in Section 4 (1) (c) (ii) of the Act is concerned, there is not even a reference in the written statement filed by the Insurance Company which also did not adduce any evidence. With regard to second substantial question of law, regarding the loss of earning capacity, this Court had noticed that though there was no specific objections raised, the claim of having suffered such loss of earning capacity can be inferred from the questions put to the Doctor in the cross examination. Be that as it may, since the substantial questions have been formulated which are questions of law, this Court would examine the said questions in the context of the materials available on record.

12. Ms. Roy, the learned counsel for the appellant while referring to the provisions of Section 4 (1) (c) (ii) has also referred to the injuries specified in Part 2 of Schedule 1 of the Act. The language employed in the statute would however make it clear that while the injuries specified in Part II of Schedule I are to be termed as permanent partial disablement, such injuries are not exclusive in nature and the requirement in

law is to establish that the injuries suffered would cause permanent partial disablement. In the instant case, the learned counsel may be right in contending that the certificate of disablement has not been issued by an appropriate authority as prescribed under the law. However, this Court has noticed that the Doctor who had examined the claimant had adduced evidence as PW2 and in such evidence, he had stated that on examining the patient on 18.12.2008, it was found that he had difficulty in movement of left hip joint and left knee joint and could not walk properly. It was further deposed that the claimant had developed Chronic osteo arthritis on the left hip and knee joint resulting in physical disability. Therefore, it is not a case where such disablement was claimed on the basis of a Certificate but the doctor who had examined the claimant had also deposed before the learned Commissioner.

13. This Court has also noticed that the accident was of the year 2007 and more than 16 years have passed and the amount awarded was Rs. 2,47,140/- (Rupees Two Lakh Forty Seven Thousand One Hundred Forty) which cannot be said to be an exorbitant amount. This Court has also noticed that the claim regarding the salaries and employment was admitted by the owner who was impleaded as O.P. No. 1 in the claim petition. It is also seen that the interest awarded of 12% is from the date of issue of the order and not from the date of accident. Therefore, taking into consideration the all the aforesaid facts and also keeping in mind the objective of the statute which is a beneficial case of legislation, this Court is of the view that interference on technical ground which will not make a considerable difference to the amount awarded may not be called for, more so, when the amount involved is not an exorbitant one. In view of the aforesaid discussions, the instant appeal is disposed of without interfering with the Award. At this stage, Ms. Roy, the learned counsel has submitted that 50% of the awarded amount was deposited before this Court which perhaps has not been withdrawn by the claimant.

14. Accordingly, the appellant is directed to deposit the balanced 50% which



however would carry interest @ 12% in terms of the order of the learned Commissioner.

15. Appeal accordingly stands disposed of.

16. Send back the LCR.

JUDGE

Comparing Assistant