
(2006) 09 GAU CK 0010

Gauhati High Court

Case No: M.F.A. No. 44 of 2004

National Insurance Co.
Ltd.

APPELLANT

Vs

Dipen Laskar and
Another

RESPONDENT

Date of Decision: Sept. 5, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 304(A), 338
- Workmens Compensation Act, 1923 - Section 4(2), 4(A), 4(A2), 4(A3)

Citation: (2009) 2 GLT 347

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Advocate: A. Ahmed, for the Appellant; M. Choudhury, for the Respondent

Final Decision: Allowed

Judgement

H.N. Sarma, J.

This appeal is filed against the judgment and order passed by the learned Commissioner, Workmen"s Compensation, Nagaon in W.C. Case No. 135 of 2002, dated 6.1.2002.

2. By the said judgment the learned Commissioner allowed the claim of the Respondent/opposite party No. 1 to the extent of Rs. 1,99,661/- along with simple interest at the rate of 12% per annum, calculated w.e.f. 28.2.2002 i.e. the date of the accident, until the amount is deposited.

3. The claimant filed the aforesaid claim case alleging inter alia that he was employed as a driver by the Respondent No. 2 in his vehicle bearing Registration No. AS-02-A-1161 (709 Mini Bus) on 28.2.2002. The claimant was proceeding from Hojai to Kharupetia carrying passengers in his vehicle. The vehicle having developed some mechanical defect, lost its control and met with an accident, at around 4.30 p.m. As a result of the

accident the claimant sustained grievous injuries on his right wrist and right shoulder in the form of fracture, including other injuries on his head, chest and leg. The claimant was taken to local hospital for treatment and there from he was taken to the GD. Nursing Home, at Nagaon where he was admitted as indoor patient. The accident being informed to the police, GD Entry No. 416 dated 28.2.02 was recorded and Kaliabor, P.S. Case No. 22/ 2002, under Sections 279/338/304 (A) IPC was registered. Alleging in the aforesaid manner, the claimant filed the aforesaid case praying for compensation amounting to the extent of Rs. 3,00,000/- under the Workmen's Compensation Act, 1923. Notice of the case having been served upon the Appellant as well as the Respondent No. 2, owner of the vehicle, they appeared and filed the written statement. In his written statement, the owner admitting the fact of employment of the claimant as driver of the vehicle, pleaded inter alia that the vehicle is covered under the insurance policy of the National Insurance Company, Airing the relevant time the claimant was employed as a driver on a salary of Rs. 3,000/- p.m., and daily allowance @ Rs. 50/- per day was also paid to him.

4. In their written statement the Insurance Company pleaded inter alia that the claim petition is not supported by relevant documents and they also denied the fact that the accident arose out of and in course of his employment as alleged. The quantum of salary and daily allowance of the claimant was also disputed. The accident is alleged to have been occurred on own fault of the claimant.

5. During the course of hearing the claimant examined himself as well as the attending physician as P.W. 2. The Insurance Company did not adduced any evidence. Upon hearing the parties and on considering the materials available on record including the evidence of the Doctor, the learned Commisioner passed the impugned award as aforesaid.

6. In support of his case the claimant as P.W. 1 has deposed that his salary as driver was Rs. 3,000/- p.m. in addition to the daily allowance at the rate of Rs. 50/- per day and after the accident, the employer neither paid him the salary nor offered him any money for his treatment and he exhibited several documents including medical treatment, X-ray report and the disablement certificate issued by the Doctor. He further deposed that after the accident, he stayed in his home and he could not pursue his job of driving.

7. The Doctor as P.W. 2 in his deposition stated inter alia that he treated the claimant and he is a Government Medical Practitioner working at 16th A.P.B.N. (IR) Hospital at Dalang Ghat. He also stated that he works as resident Doctor at GD. Nursing Home and Research Centre, Nagaon where he has his own character. He further stated that the victim was examined by him on 28.2.2002 and found the following injuries:

- a) Right cavicular fracture.
- b) Communated fracture in right radius bone involving particular margin.
- c) Head injiuiies involving occipital region epistaxis.

d) Injury in right chest with occasional haemoptysis.

That apart he found some simple injuries i.e., bruise over the right shoulder and arm that restricted limb movement, lacerated injury over the right side face and lower limb. The Doctor opined that the injuries were due to a road traffic accident on 22.8.2002. He further opined that the patient developed B/L chest pain, multiple joint pain, peripheral neuropathy and arthralgia which made him physically disabled to the extent of 30% permanently. He further opined that due to physical disablement he would lose his earning capacity to the extent of 60%. The Doctor further stated that with constant treatment the condition of the patient may or may not improve.

8. The learned Commissioner on scrutiny of the evidence of the Doctor and on personal verification of the claimant did not agree that the claimant has lost his earning capacity to the extent of 60% and on the basis of the material available on record he assessed such loss to be not more than 40%. Regarding the earning of the claimant the learned Commissioner found that he was paid 4,000/- p.m. inclusive of the allowance as admitted by the employer in their written statement. In the absence of the evidences from the employer the learned Commissioner accepted the earning of the Petitioner as 4,000/- p.m.

Considering the age of the Petitioner to be 30 years the learned Commissioner applying the relevant multiplication formula as per the Schedule of the Act awarded the sum of Rs. 1,99,661/- as compensation and simple interest at the rate of 12% per annum w.e.f 28.2.2002 i.e. from the date of the accident and the Insurance Company/Appellant was directed to pay the said amount within 30 (thirty) days.

9. I have heard, Mr. A. Ahmed, learned Counsel for the Appellant and Mr. M. Choudhury, learned Counsel appearing for the claimant/Respondent.

Although Mr. Ahmed has raised several substantial questions of law ultimately confines to the following questions only:

i) Whether the inclusion of daily allowances to the wages of the Petitioner in calculating the loss is legally justified ?

ii) Whether direction to pay interest w.e.f the date of accident is violative of the provision of Section 4(A) of the Workmen Compensation Act in the facts of the case.

10. In support of his arguments Mr. Ahmed has referred to the decision of the Division Bench of this Court in M.F. No. 3/2003 Oriental Insurance Co. Limited v. Mrs. Lavanna Das and Ors. disposed of on 9.9.2004 and submits that the daily wages cannot be included in the sum in calculating the income of the Plaintiff.

11. I have perused the aforesaid decision of the Division Bench of this Court. In the aforesaid case it has been categorically held that the daily allowances is not to be

included with the income of the Petitioner which is binding upon this Court. Accordingly, I hold the learned Commissioner committed substantial error in law in adding the daily allowance at the rate of Rs. 50/- per day while calculating the wages of the claimant. The evidence and material available on record discloses that the monthly wage of the claimant was Rs. 3,000/- and accordingly the compensation is to be calculated accepting the aforesaid monthly wages of Rs. 3,000/- and not Rs. 4,000/- as calculated by the learned Commissioner.

12. The next substantial question of law urged by Mr. Choudhury is that the learned Commissioner erred in law in directing to pay the interest at the rate of 12% w.e.f. 28.2.2002 i.e. from the date of the accident itself and thus misapplied the provisions of Section 4(A) of the Workmen's Compensation Act.

In highlighting the aforesaid submission Mr Ahmed contends that such interest is payable from the date on which it falls due and such liability to pay interest would arise only after one month from the date of the judgment, 6.1.2004 i.e., 6.2.2004, if the award is not satisfied in the meantime.

13. Mr. M. Choudhury, however referring to the decisions of the Apex Court rendered in (1976) 1 see 289, (1999) SCC 254 , [Ved Prakash Garg Vs. Premi Devi and others](#), submits that the liability to pay interest would arise from the date of the accident itself. The ratio of the decisions of the aforesaid cases, more particularly reported in [Ved Prakash Garg Vs. Premi Devi and others](#), shows that in the light of the Sub-section (2) of Section 4 of the Act once the compensation is due under the Act becomes assertive provisionally under Sub-Section 2 of Section 4 the Workmen's Compensation Act for final adjudication by the Commissioner and if the employer does not pay the sum from one month on which it falls due the employer shall pay under Sub-section 2 of Section 4A at the rate of 12% per annum provided therein the penalty as contemplated under Sub-section 4A(b) thereafter amended as Section 4A(3) of the Act. Thus interest payable on the principal amount if not paid when it falls due after one month of its falling due. In the record of the instant case disclose that there is provision for determination of the compensation u/s 4A(2) and the final determination of the liability was made on 6.1.2004 by the impugned order. On such consideration the order of Commissioner to pay interest at the rate of 12% per annum w.e.f 28.2.2002 is not sustainable and such liability to pay interest arose only from 6.2.2004 i.e. one month after the fixation of such liability.

14. In view of the aforesaid discussion this appeal stands allowed to the extent indicated above.

15. The matter is now remanded back to the learned Commissioner who, shall on receipt of the record immediately assess the compensation payable by the Appellant/insurance company holding the monthly income of the claimant as Rs. 3,000/- p.m. and the rate of interest as awarded would also accrue from 6.2.2004 as held above. The learned commissioner shall complete the entire assessment within a period of 2 (two) weeks from

the date of the receipt of the certified copy of the order. On such assessment the Appellant shall deposit the additional amount whatever due to the claimant with interest. It is submitted by Mr Ahmed the entire amount is deposited with the Commissioner. If that be so, the learned Commissioner shall pay the amount payable to the claimant forthwith and the balance if any shall be refunded to the Insurance Company.