

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 11.10.2012

+ FAO 250/2010

ORIENTAL INSURANCE CO LTD Appellant
Through : Ms. Neerja Sachdeva, Adv.

versus

SIKANDER AND ANR. Respondents
Through : Mr. Anshuman Bal, Adv.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

FAO No. 250/2010 & CM No. 12058/2010 (for addl. evidence)

1. By way of this appeal, challenge has been made to the impugned order dated 10.03.2010 in W.C. No. 87/NW/08 passed by the Commissioner, Workmen's Compensation, Ashok Vihar, Delhi.
2. Respondent no. 1 i.e. the injured had filed a claim petition for the grant of compensation under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act') alleging therein that he was employed by respondent no. 2. During the course of employment, he had met with an

accident on 11.11.2002 at about 10.55 p.m. near L block, Shakurpur, Delhi near Balmiki Mandir while driving TSR bearing no. DL-1RH-1392 belonging to respondent no. 2. The TSR was overturned and he sustained injuries in the accident. He had alleged that at the time of accident he was 32 years of age and was drawing salary of ₹ 4,000/- p.m. The accident was also registered in P.S. Saraswati Vihar vide FIR No. 830/2002 on 12.11.2002 u/s 279/337 IPC. The respondent no. 1/injured had alleged that the TSR was insured with appellant as such the liability to pay the compensation was joint and several of appellant and respondent no. 2.

3. The appellant/Insurance company had filed written statement before the Commissioner denying the claim of respondent no. 1. The appellant had also taken a stand that respondent no. 1 be put to strict proof that he was the employee of respondent no. 2. The appellant had also alleged that the appellant is not liable to pay any amount and the claim raised was without any basis.

4. Respondent no. 2/employer had also filed written statement admitting the relationship of employer/employee and also admitted that the accident took place out of and in the course of employment. However, respondent no. 2 submitted that the salary of respondent no. 1 was only ₹ 3500/- p.m. The employer denied his liability and contended that the vehicle in question was insured as such insurance company was liable to pay.

5. The Commissioner on the basis of admission of the employer of respondent no. 1 about employer and employee relationship and that the accident had occurred out of and in the course of employment ordered for the grant of compensation along with 50% interest. However, the amount of compensation has not been specified in the impugned order.

6. Along with this appeal, an application has been moved by the appellant under Order 41 Rule 27 of CPC for leading additional evidence to prove that the injured was not holding valid driving licence on the day of the accident. It is contended that the driving licence of respondent no. 1 had expired on 03.10.2002 whereas accident had taken place on 11.11.2002 and it was renewed only on 26.09.2003. It is contended that as per the terms of insurance policy in case of not having valid driving licence the owner of the vehicle is liable to reimburse the appellant.

7. Perusal of impugned order shows that the claimant had produced the driving licence which is valid from 10.04.2007 to 09.04.2010. There is nothing on record to show that the claimant was holding valid driving licence on the date of accident. Whether the claimant was holding valid driving licence on the day of the accident has not been examined by the Commissioner. The impugned order also does not show as to how much compensation has been awarded to the respondent no. 1. There is also a dispute about the wages which the respondent no. 1 was getting on the date of the accident. As per claimant, he was getting ₹ 4,000/- p.m. whereas as per employer he was getting ₹ 3,500/- p.m. Even this aspect has not been dealt in the impugned order. Further, the impugned order shows that 50% interest has been awarded in favour of the respondent in case the compensation is not paid to him within one month from the date of the order whereas under Section 4-A of the Act, the Commissioner can award interest of 12% or at the rate not exceeding the maximum of the lending rates of any scheduled bank. Even the interest has been awarded on higher side.

8. In view of above discussion, the impugned award is set aside. The matter is remanded back to the Commissioner. The Commissioner shall give

opportunity to the parties to lead additional evidence and thereafter shall decide the matter in accordance with law. The parties shall appear before the Commissioner on 31.10.2012. The amount deposited with the Commissioner shall remain deposited there during the pendency of the case and appropriate order shall be passed on the said amount in accordance with the outcome of the case.

The appeal stands disposed of accordingly.

CM No. 18764/2010 (for release of amount) & CM No. 12057/2010 (stay)

In view of the order on the main appeal, no further orders are required on these applications.

The same stand disposed of.

A copy of this order be sent to the Commissioner under the Workmen's Compensation Act.

VEENA BIRBAL, J

OCTOBER 11, 2012
kks