

GAHC010163962010



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

**Case No. : MFA/7/2010**

ORIENTAL INSURANCE CO. LTD.  
HAVING ITS REGISTRED OFFICE AT ORIENTAL HOUSE, P.O. NO. 7037, A-  
25/27, ASAF ALI ROAD, NEW DELHI-110002 AND REGIONAL OFFICE AT  
GUWAHATI, REPRESENTED BY ITS REGIONAL MANAGER.

VERSUS

MD. NAJAR ALI @ NASAR ALI and ANR,  
S/O MD. HAJI ABDUL RAHIM, VILL. DHANIABHETI, P.S. BATADRABA,  
DIST. NAGAON, ASSAM.

2:MOHAN LAL CHOUDHURY

S/O GANGA AM CHOUDHURY  
VILL. HOJAI TOWN  
C/O MOHAVIR RICE MILL  
P.O. HOJAI  
DIST. NAGAON  
ASSAM

**Advocate for the Petitioner : MS.M CHOUDHURY**

**Advocate for the Respondent : MRM RAHMAN**

**BEFORE**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : 18.09.2023

Date of judgment : 18.09.2023

**JUDGMENT & ORDER**

The instant appeal has been preferred under section 30 of The Workmen's Compensation Act, 1923 (presently Employee's Compensation Act, 1923) against a judgement and award dated 07.09.2006 passed by the learned Commissioner, Workmen's Compensation, Nagaon, in WC Case No 175 of 2003. By the said judgment, an amount of Rs.1,19,796/- has been awarded with interest @ 9% per annum which the present appellant was directed to pay.

2. The respondent no.1, as claimant had instituted a claim before the Commissioner for compensation for injuries sustained by him in an accident in course of his employment. The said respondent no.1 had claimed that he was a labourer of a vehicle - truck bearing registration No. AS-01C/8670 which was owned by the respondent no. 2. On 26.04.2003, the said vehicle had met with an accident at Rangagora in NH 37 wherein the claimant had alleged to have sustained multiple grievous injuries on different parts of his body. Based on the said accident G.D. Entry No. 408 was registered in Samaguri Police Station and the claimant was sent to the B.P Civil Hospital, Nagaon, where he has claimed to be an indoor patient from 26.04.2003 to 16.05.2003 and again for some days in the month of June, 2003. The claimant was advised to attend the GMCH. However, it is the case of the claimant that he was treated by one Dr. Dipesh Das privately at Nagaon. The claimant had contended that he was getting monthly salary @ Rs.4000/- and because of the accident, he had lost his physical ability to do any heavy work as a manual labourer and thereby he

had lost his earning capacity. The claimant stated that he was 30 years of age at the time of the accident and the vehicle had a valid insurance cover.

3. Both the appellant insurance Company and the owner had resisted the claim by filing written statements. The claimant had examined himself as PW-1 and the private doctor as PW-2.

4. The learned Commissioner vide impugned judgement held the claimant to be entitled to for compensation and accordingly granted compensation of Rs.1,19,796/- with interest @ 9% per annum from the date of the accident. The learned Commissioner proceeded with the presumption that he had lost his earning capacity by 30% as he had physical disability of 25%.

5. This Court, vide order dated 08.02.2010 while admitting the appeal had formulated the following substantial questions of law.

*“1. Whether special allowance paid to a workman by his employer can be construed to a part of the salary.*

*2. Whether interest can be awarded from the date of accident.”*

6. Subsequently, vide order dated 01.11.2018, another substantial question of law was formulated to the following effect.

*“1. Whether earning loss of the claimant to the extent of 30% consequent upon his disablement to the extent of 25% is in consonance with the materials on record?”*

7. I have heard Shri S. Dutta, learned Senior Counsel for the appellant whereas the respondent no. 1 is represented by Shri A.M Ahmed, learned

counsel. I have also perused the LCR.

8. Shri S. Dutta, learned Senior Counsel for the appellant has submitted that the findings of the learned Commissioner while granting the compensation is not based on any materials on record. He submits that entire findings appear to be based upon the evidence of the private doctor who had deposed as PW-2. It is submitted that the accident had occurred on 26.04.2003 and as per the claimant himself, he was treated at the B.P Civil Hospital, Nagaon. Though it appears that the document of treatment issued by the said B.P Civil Hospital was exhibited as Exhibit 16, there is no reference of the said exhibit in the impugned judgement. The judgement, on the other hand, has relied upon certain medical documents issued by the private doctor one, Dr. Dipesh Das which were given in March 2006. The question of certifying that the same had caused 25% disablement that too on 17.03.2006 is wholly unacceptable and lacks credence. However, the learned Commissioner while deciding the relevant issue No.3 had relied upon the evidence of the said doctor and the certificate issued by him. For ready reference, the discussion and findings of issue No.3 is extracted herein below:

**“Issue No. 3**

*The claimant stated in the claim petition and his evidence on record that he had sustained grievous injury in different part of his body. He was treated at B.P. Civil Hospital, Nagaon as an indoor patient at SW-III for 25 days due to injury of left foot with ankle joint and head injury and thereafter he was treated by Dr. Dipesh Das at his private chamber at Nagaon. As per injury report the claimant has been suffering chronic arthritis at left foot. Dr. D. Das also adduced*

*his evidence as P.W. No. 2. Dr. D. Das in his deposition stated that he offered treatment for the claimant for the first time on 26/06/2003 at his private chamber, and the claimant was found with a sharp deep cut injury over the left foot (Sixe 4" X 3mm) extending from lateral mellulous upto the medical mellulous and was also seen with multiple injury over the scalp, multiple bruises over the chest with restriction of movements of left food. According to him, on examination he had noticed permanent disability due to cut of the tendon of flexon and extension group with osteoarthritis of the lower end of left tibia with peripheral nuropathy. Dr. D. Das certified that due to the said ailment of the claimant he had lost his physical ability by 25% and his earning capacity is reduced by 30%. He issued a certificate to this effect and that was marked as Exhibit No. 3. Dr. D. Das on cross examination has admitted that the physical disability and loss of earning capacity may be differ. The PW No. 2 on cross examination has stated that he has issued the certificate to the patient on clinical observation and further also stated that before issuing the Exhibit-3 he did not advise the patient for chek X-ray. In view of the above discussions, I am of the opinion that, the claimant has lost his earning capacity by 30% for the injury sustained by him. Accordingly the issue No. 3 is decided."*

9. The learned Senior Counsel for the appellant accordingly submits that the present appeal is liable to be allowed and the impugned Award dated 07.09.2006 be interfered with.

10. *Per contra*, Shri Ahmed, the learned counsel for the claimant/opposite party no. 1 has submitted that the Award does not

suffer from any legal infirmity and in any case, the amount involved is only Rs.1,19,796/- for an accident occurring more than two decades back and therefore no interference may be made. With regard to the evidence of PW2, the doctor, the learned counsel has submitted that deposition is supported by documents and therefore are relevant.

11. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court including the LCR have been duly examined.

12. In this appeal, though three questions of law were formulated, the crucial question would be the third question which was incorporated vide order dated 07.11.2018 which is with regard to loss of earning.

13. As indicated above, the compensation assessed is on the basis that the claimant by his physical disability of 25% has lost his earning capacity by 30%. The said opinion of the Commissioner is based on the medical document of the private doctor namely, Dr. Dipesh Das which was issued on 17.03.2006 i.e. after about three years from the date of the accident.

14. A claim for suffering physical disability in accident has to be certified by a prescribed authority. In the instant case, though, admittedly, the claimant was treated in the B.P Civil Hospital, Nagaon from the date of the accident i.e. 26.04.2003, there is no such certificate of disability by the said hospital. In the opinion of this Court, reliance upon a certificate given by a private doctor who was allegedly consulted after about three years from the accident cannot be the basis of granting compensation on the ground of physical disability.

15. With regard to the issue on payment of interest, the said interest

has been directed to be calculated from the date of the accident. Such direction appears to be unreasonable as interest can be awarded from the date of filing of the claim petition.

16. While this Court is of the opinion that the approach of the learned Commissioner in computing the compensation is not based on relevant materials on record, at the same time, this Court cannot be oblivious of the scheme of the Act which is a beneficial piece of legislation. This Court has also noticed that almost two decades has passed since the date of the accident. Therefore, balancing the equity, the instant appeal is disposed of by interfering with the award and reducing the same to lump sum of Rs.1,00,000/- which would not carry an interest. The appellant Insurance Company is accordingly directed to deposit the amount or the balance amount, if any amount was deposited in the meantime within a period of 60 days from today.

17. The appeal stands disposed of.

18. The LCR is directed to be sent back.

19. The substantial questions of law accordingly stand answered in the aforesaid manner.

**JUDGE**

**Comparing Assistant**