

GAHC010194202011



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

Case No. : MFA/89/2011

NATIONAL INSURANCE CO. LTD.
REPRESENTED BY ITS REGIONAL MANAGER, BHANGAGARH,
GUWAHATI-5

VERSUS

AMITAVA CHOUDHURY
S/O LT. MEHENDRA NATH CHOUDHURY, I.G.ROAD, W.NO.14, DHUBRI
TOWN, PO/PS/DIST. DHUBRI.

Advocate for the Petitioner : MS.R D BHUYAN

Advocate for the Respondent : MR. S K GHOSH

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 29-09-2023

Heard Ms. S. Roy, learned counsel for the appellant. None appears on call for the respondent although the name of the learned counsel is reflected in the cause list.

(2) This appeal under section 30 of the Employee's Compensation Act, 1923 is directed against the judgment and award dated 25.07.2007 passed in WC 27/2004 by the Commissioner of Workmen's Compensation, Dhubri by which a sum of Rs.1,43,568/- was assessed and ordered to be paid at compensation to the respondent no.1 along with interest @ 9% per annum on the awarded amount from the date of accident to the claimant.

(3) The appeal was admitted for hearing on the following substantial question of law:

- (1) Whether the learned Commissioner, Workmen's Compensation was justified in assessing the loss of earning capacity of the concerned workman at 30% without there being any certificate as required under Section 4(1)(c)(ii) of the Employees Compensation Act, 1923, which requires assessment of loss of earning capacity by a qualified medical practitioner in case of non-schedule injury?*
- (2) Whether the learned Commissioner, Workmen's Compensation was justified in awarding the interest from the date of accident, under Section 4 A(3) (a) of the Employees Compensation Act, 1923?*
- (3) Whether the learned Commissioner, Workmen's Compensation was justified in awarding interest @ 9% per annum though Section 4 A(3)(a) of the Employees Compensation Act, 1923 requires awarding simple interest @12% per annum?*

(3) However, it appears from the order dated 21.12.2017, on the request made by Mr. R. Sarma, learned counsel for the appellant, the name of the respondent no.1 who is the claimant in the claim petition was struck off. Therefore, the owner of the vehicle who is the respondent no.2 only remains as the sole respondent in this appeal.

(4) Under such circumstances, the Court is of the considered opinion that if

the name of the claimant is struck off, the appeal by the insurance against the owner of the vehicle will not survive as the award which was passed by the Commissioner, Workmen's Compensation in the claim petition in favour of the claimant had attained finality.

(5) Therefore, the substantial questions of law which has been framed for hearing this appeal were essential question that would go to the root of the claim and those questions have no relationship with the respondent no.2. Moreover, without there being any counter-claim of the appellant before the forum below, it is not open to the appellant, a co-defendant in the claim petition to raise a dispute against the owner of the vehicle, again a co-defendant in the claim petition.

(6) Therefore, it is held that on the striking out the name of the respondent no.1 vide order dated 21.12.2017, this appeal has become infructuous and the appeal stands dismissed without answering the substantial questions of law in the absence of the respondent no.1/ claimant.

JUDGE

Comparing Assistant