

GAHC010271792022



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

Case No. : MFA/123/2022

ORIENTAL INSURANCE CO. LTD.
HAVING ITS REGISTERED OFFICE AT ORIENTAL HOUSE, A 25/27 ASAF ALI
ROAD, NEW DELHI-110002 AND REGIONAL OFFICE AT GUWAHATI-7
REPRESENTED BY THE REGIONAL MANAGER.

VERSUS

MD. ABDUL KARIM and ANR.
S/O LATE BABU ALI, R/O ISLAMPATTY, NAGAON TOWN, P.S. NAGAON,
DIST. NAGAON, ASSAM

2:BABLU SEN
S/O LATE N.C. SEN
R/O HAIBORGAON
P.S. NAGAON
DIST. NAGAON
ASSAM OWNER OF HE VEHICLE BEARING NO. AS-02/A-1871
TRUC

Advocate for the appellant : Mr. S. Dutta Advocate

Advocate for the Respondent : Mr. I. A. Talukdar, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.01.2023

Date of Judgment : 20.01.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Dutta, the learned counsel for the appellant and Mr. I. A. Talukdar, the learned counsel appearing on behalf of the respondent No.1.

2. The instant appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, the Act of 1923) against the judgment and order dated 11.12.2013 passed by the learned Commissioner, Workmen's Compensation, Nagaon in W.C. Case No.95/2005.

3. The instant matter has come up before this Court for admission and to ascertain as to whether any substantial question of law arises in the appeal. For ascertaining as to whether the three substantial questions of law so proposed in the Memo of Appeal arises in the facts of the instant case, it would be relevant to take note of the brief facts of the instant case.

4. While the respondent No.1 who is the claimant on 07.10.2004 was going by the wheat loaded vehicle No.AS-02/A-1871 over the rough way of Silingoni Agricultural Farm, the vehicle suddenly capsized and turned turtle to the nearby pond due to soft soil of the path and the respondent No.1/the claimant sustained injuries. The respondent No.1 was thereupon removed to B. P. Civil Hospital, Nagaon for his treatment. The Nagaon P.S. Traffic Branch entered a GD Entry No.163 dated 07.10.2004 for the said matter of accident. The respondent No.1 as claimant thereupon filed the claim proceedings contending that he has become physically disable due to his fractured injury and unable to do the handyman job following his accident and as such he is entitled to get compensation as per the provisions of the Act of 1923. It is the further contention of the claimant in the claim proceedings that the owner of the truck

was aware about the accident and his injury and as such notice before claiming the compensation is not required in the case.

5. Pursuant to the filing of the claim proceedings, notices were issued to the owner of the offending vehicle as well as the appellant Insurance Company. The claim proceedings proceeded ex-parte against the owner of the offending vehicle whereas the appellant Insurance Company has filed the written statement refuting the contentions of the claimant on various grounds and denied the liability of the claim. Thereupon, the claimant adduced himself as PW1 and submitted various documents to prove, like Accident Information Report, Injury Report, X-Ray Report and Disability Certificate, testified regarding disability and also loss of earning capacity of the claimant.

6. It is relevant herein to take note of that one Mr. L. C. Nath, a General Surgeon deposed as PW2 who had confirmed the injury and the disability of the claimant. On behalf of the appellant Insurance Company, one Sri Sunil Saikia, a Senior Assistant of Oriental Insurance Co. Ltd., Nagaon Branch adduced evidence and exhibited a certified Policy Certificate as Exhibit-A. In his evidence, he had stated that the vehicle bearing No.AS-02/A-1871 was a goods carrying vehicle owned by Sri Bablu Sen and it was insured with the appellant Insurance Company vide Insurance Policy valid from 21.06.2004 to 20.06.2005. Upon cross-examination, he had stated that the Insurance Policy was a package policy for Zone-C goods carrying vehicle and they received Rs.8003/- from the insured against the policy. The witness of the appellant Insurance Company had also admitted that the basic liability covers all. He further admitted that in Exhibit-A, i.e., the Insurance Policy there is no mention that the insured did not pay the premium for the employees of the vehicle.

7. The learned Court of the Commissioner, Employee's Compensation,

Nagaon, on the basis of the pleadings, framed as many as three issues which are as under:-

- (i) Whether the claimant was an employee as per law? And he sustained injury during the course of his employment under O.P. No.1?*
- (ii) Whether the injury sustained by the claimant cause any permanent disability with consequent loss of his earning capacity?*
- (iii) Whether the claim for compensation raised by the claimant is maintainable, and if so that would be the amount due based on his salary and age at the time of the accident And who is liable to pay?*

8. Vide the impugned judgment and award dated 11.12.2013, the learned Court of the Commissioner, Employee's Compensation, Nagaon passed the award in favour of the claimant and directed the appellant Insurance Company to deposit the amount of compensation of Rs.2,30,654/- (Rupees two lakh, thirty thousand, six hundred and fifty four) only before the Court of the Commissioner, Employee's Compensation, Nagaon, Assam within 30 (thirty) days from the date of order, failing which further interest would be payable on the amount of compensation determined above.

9. It is relevant to take note of that the Court of the Commissioner, Employee's Compensation, Nagaon while adjudicating the compensation to be payable determined that the claimant was entitled to Rs.1,15,327/- (Rupees one lakh, fifteen thousand, three hundred and twenty seven) only. On account of the interest, the learned Court of the Commissioner, Employee's Compensation, Nagaon held that the claimant was entitled to at the rate of 12% per annum from the date of filing of the claim petition till realization. The interest was calculated at Rs.1,15,327/- (Rupees one lakh, fifteen thousand, three hundred and twenty seven) only for a period of 8 years 4 months, i.e. with effect from

02.08.2005 to 02.12.2013.

10. The instant appeal has been filed proposing three substantial questions of law which are set out herein under:-

(i) Whether the interest can be imposed from the date of filing of the claim petition when the claimant sustained injury?

(ii) Whether the finding of the learned the Commissioner in respect of the income and employment of the workman is perverse as the same is contrary to the evidence on record?

(iii) Whether the injury sustained by the workman can be treated to be of such nature to reduce his earning capacity to the extent of 30%?

11. Let this Court take into consideration as to whether the first substantial question of law arises which pertains to as to whether the interest can be imposed from the date of filing of the claim petition when the claimant sustained injury. The learned counsel appearing on behalf of the appellant has drawn the attention of this Court to the judgment of the Supreme Court rendered in the case of **National Insurance Co. Ltd. vs. Mubasir Ahemd & Another**, reported in **(2007) 2 SCC 349** and submitted that in paragraph No.9, the Supreme Court had categorically mentioned that the starting point is on completion of one month from the date on which it fell due cannot be the date of the accident as there was no indication there as to when it becomes due and further held that it has to be taken to be the date of adjudication of the claim.

12. On the other hand, Mr. I. A. Talukdar, the learned counsel appearing on behalf of the respondent No.1 submitted that law has been well settled by the Four Judges Bench in the case of **Pratap Narain Singh Deo vs. Shrinivas Sabata and Another**, reported in **(1976) 1 SCC 289** wherein it has been held the employer becomes liable to pay compensation as soon as the personal injury

was caused to the workman by accident which admittedly arose out of and in the course of his employment. Paragraph nos.7 & 8 of the said judgment, being relevant, are quoted herein below:-

“ 7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil Court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the commissioner's order 224 dated May 6, 1969 under Section 19. What the Section provides is that if any question arises any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. It was the duty of the appellant, under Section 4-A (1) of the Act, to pay the compensation at the rate, provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false plea that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed

to the respondents personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the commissioner was fully justified in making an order for the payment of interest and the penalty."

13. The learned counsel for the respondent No.1, further drew the attention of this Court to another judgment of the Supreme Court in the case of ***Oriental Insurance Co. Ltd, vs. Siby George and Others***, reported in ***(2012) 12 SCC 540*** wherein the Supreme Court has categorically held that the judgment in the case of ***National Insurance Co. Ltd.*** (supra) does not express the correct view and is not a binding precedent in as much as the said judgment does not take into consideration the prior decision of the Larger Bench's decision in ***Pratap Narain Singh Deo*** (supra) as well as in ***Kerala State Electricity Board and Another vs. Valsala K. and Another***, reported in ***(1999) 8 SCC 254***. Taking into account the said aspect of the matter where the Supreme Court categorically held that the interest would be payable from the date of the accident, this Court is of the opinion that the first substantial question of law so proposed does not arise in the instant appeal.

14. The second substantial question of law so proposed is as to whether the finding of the learned Commissioner in respect of the income and employment of the workman is perverse as the same is contrary to the evidence on record. The learned counsel appearing on behalf of the appellant, during the course of argument, could not substantiate as to what is the perversity in the impugned judgment and as to what evidence on record has not been taken into

consideration. This Court, upon perusal of the impugned judgment as well as the evidence before the Court of the Commissioner, Employee's Compensation, Nagaon which was produced during the course of hearing do not in any manner find that there is any perversity in the impugned judgment. Consequently, the second substantial question of law so proposed, in the opinion of this Court, is not a substantial question of law involved in the instant appeal.

15. The third substantial question of law is as to whether the injury sustained by the workman can be treated to be of such nature to reduce his earning capacity to the extent of 30%. It appears from the evidence on record as well as the impugned judgment that the PW2 who is the doctor in question categorically in his evidence stated that there was disability of 18 % and the earning capacity of the claimant was reduced by 30%. The appellant Insurance Company neither adduced any evidence contrary to what the doctor had given could to elicit anything during the cross-examination of the doctor. Apart from the above, the question of law so proposed is a question of fact and there being no perversity show the said question of law proposed is not a substantial question of law. Considering the above, this Court is also of the opinion that the third substantial question of law so proposed cannot be formulated as a substantial question of law in the instant appeal.

16. In view of the above, as there arises no substantial question of law, the instant appeal stands dismissed.

17. The learned counsel appearing on behalf of the appellant Insurance Company has submitted that within 45 (forty five) days from the date of the instant order, the awarded amount along with the applicable interest shall be paid before the Court of the Commissioner, Employee's Compensation, Nagaon. Taking into account that the accident occurred in the year 2004 and almost 19

years have passed by, this Court directs that Appellant Insurance Company to deposit the awarded amount along with interest within 45 (forty five) days from the date of this order.

JUDGE

Comparing Assistant