

GAHC010183752023



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

Case No. : MFA/34/2024

M/S UNITED INDIA INSURANCE COMPANY LTD
REPRESENTED BY ITS CHIEF REGIONAL MANAGER, GS ROAD,
GUWAHATI 781005

VERSUS

NURUL HOQUE AND ANR
S/O LATE HASES ALO
RESIDENT OF VILLAGE AND PO RAJAALI, DIST NAGAON, ASSAM 782426

2:NISHI KANTA ROY
S/O LATE SASHI BHUSAN ROY

RESIDENT OF VILLAGE KACHUA TINIALI
PS KACHUA
DIST NAGAON
ASSAM 78242

Advocate for the Petitioner : MR. M DUTTA
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.06.2024

Heard Shri M. Dutta, learned counsel for the petitioner.

2. The instant appeal has been preferred under Section 30 of the Employees

Compensation Act, 1923 (the erstwhile Workman Compensation Act, 1923). The learned counsel has referred to the grounds of appeal which have been projected to be substantial question of law. On a perusal of the said grounds, this Court considers only the first grounds which may come within the expression "substantial question of law". The second ground is also analogous to the first ground and therefore, both the grounds are extracted hereinbelow-

a. Whether the exhibit 5, injury report can be regarded as a certificate issued by a "disqualified medical practitioner" in terms of Section 4 1, (c) (ii) read with Section 2 (i) of the Employee's Compensation Act, 1923, so as to make the assessment of disablement, admissible in law, the injuries not being specified in the schedule of the Act?

b. Whether in view of the requirement of Section 4 (1) (c) (ii) read with 2 (i) Employee's Compensation Act, 1923, providing for assessment of injuries by "qualified medication practitioner", a duty was cast on the Ld. Commissioner to examine the admissibility of the Exhibit 5, injury report and whether discharged that function."

3. Though the concerned medical certificate has not been annexed, Shri Dutta, learned counsel has drawn the attention of this Court to the portion of the impugned judgment and order dated 19.06.2023 passed in Case No. NEC(WC)/29/2014 by the learned Commissioner, Nagaon. The issue no. 3 is with regard to the injuries sustained and the treatment undergone by the claimant. The claimant was a handyman in vehicle No. AS-02E/0646 (407 Mini Truck) which was duly insured with the appellant. The fact of the cover by the Insurance is not disputed and the dispute is only with regard to the medical certificate issued, more specifically with the requirement that the same has to be issued by a qualified medical practitioner.

4. Section 4 (1) (c) (ii) of the Act reads as follows:

“(ii) in the case of an injury not specified in Schedule I such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.”

5. The discussions in the issue no. 3 of the impugned judgment does not even give an indication that the aforesaid requirement is not fulfilled by the certificate issued by one Dr. D.N. Hazarika, who is a Doctor in the B.P. Civil Hospital, Nagaon and also has a private chamber. The said Dr. D.N. Hazarika was also examined as PW-2 (medical witness).

6. On a perusal and consideration of the aforesaid discussion, this Court is of the opinion that the requirement of being a qualified medical practitioner as required under Section 4 (1) (c) (ii) of the Act is substantially met. In any case, an appeal under Section 30 of the Act is a restricted appeal which is available only on substantial questions of law and the questions tried to be raised would not come within the restricted meaning of substantial question of law.

7. This Court has also taken into consideration that the amount granted by the Award is Rs.4,14,048/- and taking into consideration the nature of the injuries, the said amount is not held to be excessive in any manner.

8. Accordingly, the appeal held to be not maintainable and accordingly dismissed.

JUDGE

Comparing Assistant