GAHC010179202020

2026:GAU-AS:10047

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

MFA/58/2022

The National Insurance Company Ltd.,
The National Insurance Company Ltd.,
Address- Registered Head Office At 3, Middleton Street, Calcutta-700071, Rep. By The Manager, Gauhati Regional Office, Bhangagarh, Guwahati, Kamrup(M), Assam, Pin- 781005.

.....Appellant

-Versus-

1: Md. Abdul Malek And Anr. B,
Md. Abdul Malek,
Address-S/o-Md. Samir Ali,
R/o-Village-PanchmileTengabasti,
P.O. Panchmile,
P.S. Tezpur, Dist.-Sonitpur, Assam,
Pin-784025.

2: Mrs. Anuwara Jahan,
W/o-Ayub Ali,
R/o-Village-Uriamguri,
P.O. Panchmile,
P.S. Borghat, Dist.-Sonitpur, Assam,
Pin-784025.

.....Respondents

For Appellant : Ms. R.D. Mozumdar, Advocate

For Respondent(s) : Mr. K. Bhattacharjee, Advocate

Date of Hearing : **05.05.2026**
Date of Judgment : **22.07.2026**

BEFORE

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER

[1] Heard Ms. R. D. Mozumdar, the learned counsel for the appellant. Also heard Mr. K. Bhattacharjee, the learned counsel for the respondent No. 1/claimant.

[2] This appeal under Section 30 of the Employees' Compensation Act, 1923 has been filed by the appellant, namely, the National Insurance Company Limited, impugning the judgment and award dated 27.02.2019, passed by the learned Commissioner, Employees' Compensation, Sonitpur, Tezpur in W.C. Case No. 32/2012, whereby, the present appellant was directed to pay the compensation amount of Rs. 10,99,591/- to the respondent No. 1/claimant, along with an interest at the rate of 12% per annum.

[3] The facts relevant for consideration of the instant appeal, in brief, is that the respondent No. 1/claimant, who was working as a labour in the vehicle bearing Registration No. AS-12-D-2520(407 Truck) belonging to the respondent No. 2 sustained grievous injuries on his person in an accident which occurred on

16.01.2012, when the truck in which he was travelling on that day, hit another vehicle which was parked in the middle of the road. After the accident, the respondent No. 1/claimant was admitted in Dispur Hospital, Guwahati and it was found that he suffered from Type 3 compound fracture of both bones of leg with degloving injury (R) foot/angle with fracture of bone (L) forearm, in the accident. He was operated upon and fitted with steel rod and was advised not to do labour work in the vehicle. His disability was assessed by one Dr. D.J. Deka, to the extent of 40 %. In connection with the aforesaid incident, a police case, i.e., Kaliabor P.S. Case No. 16/2012 was also registered.

[4] The respondent No. 1/claimant, thereafter, approached the Commissioner, Employees' Compensation Sonitpur, Tezpur and filed a claim petition seeking compensation for the injury sustained by him in the aforesaid motor vehicular accident, arising out of and in the course of his employment as a labour in the said vehicle bearing Registration No. AS-12-D-2520(407 Truck).

[5] His claim case was registered before the Commissioner, Employees Compensation, Sonitpur as W.C. Case No. 32/2012. The owner of the offending vehicle as well as the insurance company contested the claim by filing written statements.

[6] On the basis of the pleadings of the parties, following issues were framed:-

i. *"Whether Abdul Malik was a Workman within the Employees' Compensation Act, 1923 as amended?*

ii. *Whether the accident arose out of and in the course of employment?*

iii. *Whether the said claimant is entitled to get compensation; if so, what shall be the quantum and from whom?"*

[7] In support of his claim, the respondent No. 1/claimant adduced evidence of himself as PW-1 and exhibited 9(nine) documents as Exhibit-1 to Exhibit-9. The opposite parties did not adduce any evidence against the claimant's case. Ultimately, by the judgment which has been impugned in this appeal, the Commissioner, Employees' Compensation, Sonitpur allowed the claim of the claimant by awarding him a compensation amount of Rs.10,99,591/- (Rupees Ten Lakh Ninety-Nine Thousand Five Hundred and Ninety-One) only, along with an interest at the rate of 12% per annum thereon.

[8] At the time of admission of this appeal, this court had formulated following substantial questions of law in this appeal:-

i. *"Whether in view of the fact that the injuries and the resultant disability would not incapacitate the Workmen's in pursuing every employment, the*

compensation can be assessed under Section 4(b) of the Employees' Compensation Act, 1923, as done by the learned Commissioner in a perverse manner?

ii. *Whether the learned Commissioner can assess loss of earning capacity on his own?*

iii. *Whether in view of the fact that injuries suffered by the petitioner does not fall under Schedule 1 injuries of the EC Act 1923, the compensation can be granted under Section 4(b) of the EC Act 1923?"*

[9] As regards the first substantial question of law formulated in this appeal, Ms. R.D. Mozumdar, the learned counsel for the appellant submits that the learned Commissioner, Employees' Compensation, Sonitpur, erred in holding that the claimant is entitled to get compensation under Section 4(b)of the Employees' Compensation Act, 1923, in as much as the injury sustained by the claimant in the instant case is not the kind of injuries which are enlisted in Schedule-1 of the Employees' Compensation Act, 1923. She submits that there is also no evidence on record that the claimant, because of the injury sustained by him in the accident, will not be able to do any kind of work to earn his livelihood. She submits that the only evidence on record is that he cannot do the work of labour

which he was doing before the accident. She submits that the injuries sustained by the claimant might have reduced the earning capacity of the claimant in his earlier engagement, but he is not incapacitated from earning and engaging in every employment as no such evidence is there on record. As such, she submits that the compensation ought to have been assessed under Section 4 (1)(d) of the Employees' Compensation Act, 1923, instead of Section 4 (1)(b) of the Employees' Compensation Act, 1923.

[10] In support of her submission, she has cited ruling of a coordinate bench of this court in the case of ***"The Oriental Insurance Co. Ltd. Vs. Md. Rupchan Ali and Anr."*** (Judgment dated 16.05.2019 in MFA No. 186/2017).

[11] The learned counsel for the appellant has also submitted that the learned Commissioner, Employees' Compensation, Sonitpur also erred in passing the impugned judgment without taking into consideration that there is no evidence of a qualified medical practitioner regarding the loss of earning capacity of the claimant/respondent No. 1. She submits that the doctor, who issued the disability certificate, was not examined as a witness by the claimant/respondent No. 1 before the Commissioner, Employees' Compensation, Sonitpur. She also submits that the provisions contained in Section 4 (1)(c)(ii), the loss of earning capacity in case of an injury not specified in Schedule-1 of the Employees' Compensation Act has to be assessed by a qualified medical practitioner. However, same has not been done in the

instant case, as no qualified medical practitioner was examined as a witness by the Commissioner, Employees' Compensation, Sonitpur, while awarding the compensation to the claimants/respondent No. 1. She, therefore, submits that this case is required to be remanded after setting aside the impugned judgment to the learned Commissioner, Sonitpur for examination of a qualified medical practitioner for assessing the functional loss of earning capacity of the claimants/respondent No. 1 due to the accident involved in this case.

[12] In support of her submission, she has cited following rulings of this court:-

i. ***"Oriental Insurance Co. Pvt. Ltd. Vs. Md. Furad Ali @ Farida Ali and Anr."*** (Judgment dated 22.11.2016 in MFA No. 43/2011);

ii. ***"New India Assurance Co. Ltd.Vs. Sanjit Kumar And Anr."*** reported in ***"(2000)2 GLT 567."***

[13] On the other hand, Mr. K. Bhattacharjee, the learned counsel for the respondent No. 1/claimants has submitted that the Commissioner, Employees' Compensation, Sonitpur has considered the evidence which was available on record in its true perspective and, thereafter, awarded the compensation to the present respondent No. 1/claimant after considering the evidence on record as well as applicable law and as such, there is no infirmity in the impugned judgment and award warranting

any interference by this court. As such, he prays for dismissing the instant appeal. He submits that there is evidence on record that the doctor, who examined the claimants/ respondent No. 1 and who had issued Exhibit-8 disability certificate to him was not alive and as such, he could not be examined by the claimant. He submits that under such circumstances, the Commissioner, Employees' Compensation, Sonitpur was right in assessing the loss of earning capacity himself on the basis of materials available on record, including the disability certificate which was exhibited as Exhibit-8. He further submits that it is for the Commissioner, Employees' Compensation to assess the loss of earning capacity after taking into consideration the percentage of physical disability assessed by the doctor. He submits that the medical practitioners are not competent to assess the loss of earning capacity which is not relatable to medical profession. It is to the doctors only to assess the percentage of physical disability and it is for the Commissioner Workmen's Compensation to work out the loss of earning capacity on the basis of materials available on record, including the disability certificate. In support of his submission, the learned counsel for the respondent No. 1 has cited following ruling:-

i. ***"M/s Vivek and Co. Vs. N Ravi and another"*** (judgment dated 12.02.2021 in C.M.A. No. 1705/2018 of High Court of Madras);

ii. ***"Oriental Insurance Company Limited Vs. Shyam Lal and another"*** [judgment dated

22.11.2021 in First Appeal No. 1100 of 2009 of High Court of Bombay(Nagpur Bench)];

iii. "***Oriental Insurance Company Limited Vs. A.J. Thomas"*** reported in ***"(2010)2GLJ 627;"***

iv. "***M/s National Insurance Co. Ltd. Vs. Laldari Choudhury And Anr."***(Judgment dated 6th January 2025 passed in MFA No. 48/ 2006 by a coordinate bench of this court

v. ***"Indra Bai Vs. Oriental Insurance Company Ltd."*** reported in ***"2023 LiveLaw (SC) 543;"***

vi. ***"Divisional Manager, J&K State Forest Corporation Vs. Satish Kumar"*** (judgment dated 25.03.2026 passed in MA No. 454 /2011 by High Court of J&K).

[14] I have considered the submissions made by learned counsel for both sides and have gone through the materials on record. I have also gone through the rulings cited by learned counsel for both sides in support of their respective submissions.

[15] On perusal of the materials available on record, it appears that the respondent No. 1/claimants suffered from Type 2 compound fracture of both bones (L) leg with de-globing injury (R) foot / ankle with fracture of both bones (L) forearm.

[16] Apparently, the injuries sustained by the claimant are not enlisted in Schedule-1 of the Employees' Compensation Act, 1923. As such, the compensation to which the claimants/respondent No. 1 is entitled has to be assessed under the provisions contained in Section 4(1)(c)(ii) of the Employees' Compensation Act, 1923.

[17] It also appears that while computing compensation under the aforesaid provision, the employee shall be entitled to such percentage of compensation payable in the case of permanent total disablement as is proportionate to loss of earning capacity (as assessed by the qualified medical practitioner), permanently caused by the injury. However, in the instant case, though the injury sustained by the claimants/respondent No. 1 is a non-scheduled injury, the Tribunal has assessed the compensation payable to him under Section 4 (1)(b) of the Employees' Compensation Act, 1923, which is unsustainable in law as in case of non-scheduled injuries, the compensation has to be assessed under Section 4(1)(c)(ii) of the Employees' Compensation Act, 1923.

[18] Moreover, while doing so, the Tribunal has to consider the loss of earning capacity of the employee as assessed by a qualified medical practitioner as held by a co-ordinate branch of this court in the case of ***"New India Assurance Co. Ltd. Vs. Sanjit Kumar And Anr."(supra)*** and ***"The Oriental Insurance Co. Ltd. Vs. Fida Ali @ Farid Ali" (supra).***

[19] As such, all the three substantial questions of law formulated in this appeal are answered in negative and the impugned award is held to be unsustainable in law and same is, accordingly, set aside.

[20] The case is remanded to the Commissioner, Employees' Compensation, Sonitpur to reassess the compensation payable to the claimants/respondent No. 1 under Section 4(1)(c) (ii) of the Employees' Compensation Act, 1923 after getting the loss of earning capacity of the claimant assessed by a qualified medical practitioner as expeditiously as possible.

[21] Registry to send back the records of W.C. Case No.32/2012 to the learned Commissioner, Employees' Compensation, Sonitpur, along with a copy of this judgment for compliance.

[22] The learned Commissioner shall issue notice to the parties fixing a date for appearance as expeditiously as possible after receipt of the aforesaid records and, thereafter, in pursuant to the direction issued hereinabove shall dispose of the case as expeditiously as possible.

[23] This appeal stands allowed to the extent indicated hereinabove.

JUDGE

Munmun Boruah
Digitally signed by Munmun Boruah
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Comparing Assistant