IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5766 of 2016 (O & M)
Date of decision: 20.01.2017

HDFC Ergo General Insurance Co. Ltd. ....Appellant(s)

Versus

Sunder Singh and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 19836-CII of 2016

Application for condonation of delay of 122 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit of the Manager of the appellant.

Delay condoned.

FAO No. 5766 of 2016 (O & M)

In the present appeal filed under Section 30 of the Employee's Compensation Act, 1923 (in short 'the Act'), the insurance company challenges the order dated 29.01.2016 whereby, sum of ₹11,79,809/- has been held liable to be paid to the respondent no. 1-employee. The amount has been assessed on account of the fact that the said respondent was working as a Driver on the vehicle of respondent no. 2 and had met with an accident on 09.03.2013. He had received serious multiple injuries on his person and his right hip and right tibia fibula bones were fractured during the course of his employment. The disability certificate Ex.AW-1/A was produced before the Commissioner to show that he had suffered 32% permanent disability. The witness namely Dr. Pankaj Aggarwal, Ortho Surgeon, Civil Hospital, Gurgaon was also examined as AW-2 to demonstrate that the employee could not do the work on the heavy vehicle or commercial vehicle due to the disability which had, thus, led to 100% loss of earning capacity. Resultantly, keeping in view the fact that his age was of 46 years, the wages were determined at ₹8,000/- per month and the relevant factor was assessed at 166.29 and his entitlement to receive the compensation was held to be at ₹7,98,192/-. In addition thereto, the employee was able to show that hospital charges, receipts, final bills of ₹7,48,000/- had been spent by him on his treatment and resultantly, the said amount was also awarded. The interest was payable from the date of the accident which was calculated at ₹2,96,817/- keeping in view the settled proposition since the payment had not been made within one month from the date of accident. Accordingly, the total amount of ₹11,79,809/- was held liable to be paid by the appellant.

Counsel for the appellant-company has raised an argument that the disability was only to the tune of 32% and, therefore, the loss of 100% regarding the earning capacity was wrongly done. He has placed reliance upon judgment of the Apex Court in ***Palraj vs. The Divisional Controller, Nakrtc, 2010 (11) SCR 89*** to submit in this regard.

A perusal of the said judgment would go on to show that in the said case the employee in that case had lost the use of his legs for the purpose of driving the vehicle but he had been adjusted as a peon by the respondent-Corporation and was also drawing a equivalent salary as such. It was in such circumstances the Apex Court held that the loss of earning capacity has to be computed keeping in mind the alternative employment given to the workman on the same salary and the same could not be ignored in computing the amount of compensation. Resultantly, the said judgment is not applicable to the facts and circumstances of the present case.

The Commissioner has relied upon the judgments in ***New India Assurance Co. Ltd. vs. A. Narsimhulu and another, 2010 ACJ 1593*** and ***New India Assurance Co. Ltd. vs. S. Ambagowda and another, 2010 (83) ACJ 1344*** wherein, it has been held that once the workman-employee could not work as a Driver, therefore, he would suffer total disablement qua the work he was capable of performing. In the said cases, the employee was the driver and the vehicle had met with an accident resulting in shortening of the leg and the physical disability suffered was above 40%. Accordingly, the doctor had stated that the workman could not be a driver and, therefore, it was accordingly held that he suffered total disablement on account of the fact that he was incapacitated from doing the work he was capable of performing before the accident.

In the present case, as noticed, a factual finding has been recorded as such regarding the inability of the workman to perform the work of a Driver of which he was skilled to do. The amounts thereafter have also been awarded on the basis of the treatment which he had taken and for which relevant material had been placed on record as Exs. AW2/11 to Exs.AW2/14, A-2 to A-4 etc. The certificate of disability would go on to show that it has been mentioned that the employee has a post operative weakness of the right and left legs with restricted movements of knee by 50% partial loss of disability. Proviso to Section 30 provides that no appeal shall lie against any order unless a substantial question of law is involved in the appeal.

In such circumstances, the amount as such awarded by the Commissioner does not warrant any interference by this Court in the absence of any substantial question of law being involved. Accordingly, there is no merit in the present appeal and the same is dismissed in limine.

20.01.2017 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No