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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 02nd September, 2019

+ FAO 425/2016 & CM No.9553-9554/19 & CM No. 16708/19

RELIANCE GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. A.K. Soni and Mr. Pavan
Kumar Vashishth, Advocates

versus

MANOJ SINGH @ MANOJ CHANDRAWANSHI

& ANR

....Respondents

Through: Mr. R.K. Nain and Mr. Ashish
Tilwani, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On his claim petition (case no.WC/40/NW/15/3124-26 dated 29.04.2016) under Employees' Compensation Act, 1923, the Commissioner Employees' Compensation, by his decision dated 29.04.2016, *inter alia*, held the first respondent (claimant) to have been rendered permanently disabled to the extent of 100% unable to perform the work (of a driver of motor vehicle) in which he was previously engaged prior to the motor vehicular accident that had statedly occurred on 02.10.2011, in his then stated capacity of an employee of the second respondent (employer) on vehicle no.HR-55F-3206. The Commissioner, thereafter, proceeded to award compensation in the sum of Rs.9,34,272/- with simple interest at the

rate of 12% p.a. with effect from 02.11.2011 besides direction for payment of medical expenses calculated in the sum of Rs.27,827/-, the liability to pay being fastened on the appellant (insurer).

2. The insurance company has come up with the appeal at hand challenging the above mentioned award, *inter alia*, pointing out that the evidence led before the Commissioner as to the claim of permanent disability was deficient and that the assumption of the tribunal about the permanent total disability is erroneous referring in this context, *inter alia*, to the factum of renewal of his driving licence by the claimant in 2013 post the injuries statedly suffered in the accident.

3. Though the appeal was resisted initially by the claimants, during the hearing, it was fairly conceded by the counsel on his behalf that evidence more than what was adduced during the inquiry before the tribunal was requisite to support the claim about total disability. In this context, reference may be made to the fact that in the claim petition, there was no reference whatsoever to any injury suffered by him in the right lower limb, which is the injury with reference to which a disability certificate appears to have been issued by a Medical Board of Aruna Asaf Ali Hospital of Government of NCT of Delhi. It is noticeable that no member of the Medical Board which issued the said certificate has been examined at the inquiry before the Commissioner. The disability certificate which was placed on record is silent as to the nature of effect of the injuries suffered, if any, in the lower limb on the working capacity of the victim. There seems to be

no clarity in evidence even otherwise led by the claimants in this regard.

4. Surprisingly, the Commissioner jumped to the conclusion that the disability certified by the Medical Board to the extent of 27% had rendered the claimant permanently disabled affecting his working capacity totally (100%). The insurance company, on the other hand, refers to the renewal of the driving licence post the accident assumably at the instance of the claimants, it giving rise to the possibility that the claim of 100% permanent disability may not be truthful.

5. In above facts and circumstances, the counsel for the first respondent fairly conceded that the impugned judgment of the Commissioner, Employees' Compensation may be set aside and the matter remitted for further inquiry by the said tribunal wherein he may be given an opportunity to lead additional evidence. Ordered accordingly.

6. The parties are directed to appear before the Commissioner, Employees' Compensation for further proceedings on 26.09.2019.

7. This disposes of the appeal and pending applications.

R.K.GAUBA, J.

SEPTEMBER 02, 2019

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