IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No. 115) **FAO No.2696 of 2020 (O&M)**

Date of decision : 08.07.2021

Iffco Tokio General Insurance Company Ltd.

.....Appellant

Versus

Ramjeet Ram @ Ranjit Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present **:** Mr. Subhash Goyal, Advocate for the appellant.

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DEEPAK SIBAL, J. (*Oral*)

The matter has been taken up through video conferencing.

The present appeal has been preferred to challenge therein order dated 29.11.2019 passed by the Commissioner, under the Employee's Compensation Act, 1923, Circle-2, Gurugram (for short – the Commissioner), through which respondent No.1 has been awarded compensation.

The facts, in brief, which are required to be noticed for adjudication of the present appeal are that respondent No.1 was employed by respondent No.2 to drive his truck. On 16.07.2017, during the course of his employment, the truck of respondent No.2, being driven by respondent No.1 met with an accident, as a result whereof respondent No.1 received several injuries including fractures in his leg, hand and head. After lodging the FIR respondent No.1 was taken to Civil Hospital, Gurugram and then to Safdarjang Hospital, Delhi, where he was treated and later discharged.

Since respondent No.1 had received injuries in the course of his employment with respondent No.2, he filed a claim for the grant of compensation under the Employee's Compensation Act, 1923 (for short – the Act). On being put to notice of such claim the appellant appeared before the Commissioner and filed a reply. Thereafter, both the parties led their respective evidence, after consideration whereof, the Commissioner opined that respondent No.1 had suffered injuries during the course of his employment as a result of which he had permanently become medically unfit to drive a heavy vehicle. Thereafter, the Commissioner went on to calculate the payable compensation and awarded the same to respondent No.1 through the order under challenge. Since the vehicle was duly insured, the liability to pay the awarded compensation was fastened on the appellant.

The only argument raised by learned counsel for the appellant-insurance company is with regard to the quantum of compensation determined and ordered to be paid by the Commissioner. As per him respondent No.1's assessed disability was 24% and therefore, the compensation could not have been determined on the basis of 100% loss of earning capacity.

The above arguments, though *prima facie* attractive, do not stand deeper scrutiny. Respondent No.1 was employed as a driver by respondent No.2 to drive his truck. As per the proven medical certificate, due to fracture of his right femur and restricted movements of his right knee with partial loss of stability, respondent No.1 had suffered 24% permanent disability. PW-2 Dr. Pankaj Aggarwal, an Orthopedician, on the basis of the injuries suffered by respondent No.1, had opined that the respondent would not ever be able to drive a heavy vehicle and further would never be medically fit to get his driving licence renewed.

In the light of respondent No.1's disability certificate read with the statement of Dr. Pankaj Aggarwal there can be no two opinions that the injuries suffered by respondent No.1, during the course of his employment as respondent No.2's driver would make him unfit to drive a heavy vehicle for his entire life. That being so, no fault can be found in the impugned order granting compensation to respondent No.1 on the basis that he had suffered 100% loss of earning capacity.

Dismissed.

08.07.2021 **(DEEPAK SIBAL)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No