

[149] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2657-2024 (O&M)
Date of Decision : 24.09.2024

Bajaj Allianz General Insurance
Company Limited ...Appellant

versus

Sudhiraj Singh and anotherRespondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Punit Jain, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

[1] Insurer is in appeal. Appeal is directed against order dated 29.03.2024 passed by the Commissioner, Under Employee's Compensation Act, 1923, Circle-IV, Gurugram.

[2] Claimant, who was working as Driver on vehicle No.RJ-09-GB-2776, claimed compensation under the provisions of the Act of 1923, claiming that while he was working on the vehicle and the vehicle was being unloaded, rain started pouring. Bag of samples having lime stone powder got heated due to the rain water. Claimant slipped and fell down from the vehicle, sustaining fracture on his leg, whereby he was rendered permanently disabled. Doctors assessed the disability to the extent of 36% and the disability was described as under:-

“Post traumatic fractured (L) Femur with restricted ROM (L) Knee 40=20 with restricted RO MOL Hip with partial loss of stability.”

[3] On notice, respondents appeared. Respondent No.1 in his written statement disputed the accident and injuries during the course of employment. Respondent No.2 denied all the averments. Following issues were framed by the Commissioner:-

- “1. Whether the relationship of employer and employee do exist between the respondent No.1 and the injured/applicant at the time of accident and injuries? OPP*
- 2. Whether the claim application maintainable or not? OPR*
- 3. Whether the Court has territorial jurisdiction or not? OPR*
- 4. Whether the respondent No.1 breach any terms and conditions of the Insurance Policy and respondent No.2 being insurer of the vehicle No.RJ-09/GB-2776 is liable to the claim of the applicant? OPR*
- 5. Whether the injured/applicant is entitled to the compensation as claimed in the claim application, if so, what amount and from whom? OPR*
- 6. Relief, if any.”*

[4] After analyzing evidence brought on record, issue Nos.1 to 3 were decided, holding that the claimant was employed with respondent No.1 and the Commissioner had territorial jurisdiction to decide the claim petition filed. After assessing the disability, Commissioner held that claimant suffers 100% loss of earnings and resultantly awarded him compensation to the tune of Rs.15,52,680/- apart from treatment expenses of Rs.23,640/- and costs assessed @ Rs.5000/-.

[5] Learned counsel for the appellant has raised three-fold submissions. He submits that Commissioner erred in assessing loss of earning to the extent of 100% despite there being no scheduled injury. Reliance is being placed upon '**Palraj versus The Divisional Controller, Nekrtc', 2010(10) SCC 347**. Secondly, he submits that from the MLC, it is evident that while being admitted to the hospital, it was claimed that the injured has fallen from height whereas in the present case, he pleads that he has fallen from the truck. The two versions are totally contrary to each other.

[6] Learned counsel for the appellant further submits that the Commissioner at Gurugram lacks jurisdiction to entertain the present petition, as the accident occurred at Jamshedpur. Coming on to the objections raised with respect to the jurisdiction, Section 21 of the Act of 1923 deals with the venue of proceedings and transfer, the same reads as under:-

“21. Venue of proceedings and transfer.— —

(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which—

- (a) the accident took place which resulted in the injury; or*
- (b) the employee or in case of his death, the dependant claiming the compensation ordinarily resides; or*
- (c) the employer has his registered office:*

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the

Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard:

- [\(3\)](#) *The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.*
- [\(4\)](#) *On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.*
- [\(5\)](#) *The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.”*

[7] From the memo of parties, it is evident that the claimant claims to be resident of Gurugram. Office of the employer is also situated at Gurugram and even the insurer has its Branch Office at Gurugram. Meaning thereby, that even the insurer was working in the ordinary course at Gurugram.

[8] In view of the above, this Court finds that the objection raised by the counsel for the appellant with respect to jurisdiction is misplaced and *sans* merits and deserves to be rejected.

[9] Coming on to the alleged contradiction between the MLC as well as the claim petition, the objection with respect to the same is also misconceived. The precise plea raised by the claimant in the claim petition is that while he was unloading bag of samples from the truck, rain started pouring and there being slippery, he fell down from the vehicle i.e. truck. Same is the case which is projected in the MLC wherein, the injury is stated

to have been suffered on account of fall from height.

[10] The plea with respect to wrongful assessment of loss of income by relying upon ratio of law laid down in '**Palraj's** case (*supra*) is also misconceived. The issue with regard to permanent disability suffered by a workman on account of personal injury caused during the course of employment and the resultant effect on the loss of income has been dealt in detail by Larger Bench of Hon'ble the Supreme Court in the case of '**Pratap Narain Singh Deo versus Shrinivas Sabata and another**', 1976 (1) SCC 289, holding as under:-

"5. The expression "total disablement" has been defined in section 2(i) (1) of the Act as follows:-

"(1) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement." It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

" The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not

require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4 1/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.

6. *It has next been argued that the Commissioner committed serious error of law in imposing a penalty on the appellant under section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.*

7. *Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due with after the Commissioner's order dated May 6, 1969 under section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of a agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under section 3, in*

respect of the injury, was suspended until after the settlement contemplated by section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

8. *It was the duty of the appellant, under section 4A(1) of the Act, to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty. ”*

[11] In view of the aforesaid ratio laid down by the Hon'ble Supreme Court, this Court finds that the Commissioner rightly assessed the loss of income suffered by the claimant due to restricted movement in left knee and left hip, keeping in view that he was a driver of a commercial vehicle, granted him compensation assessing the loss of income to be 100%.

[12] In view of the above, this Court finds that there is no error on perversity in the pure findings of facts recorded by the Commissioner, which are based on proper appreciation of the evidence. There is no question of law much less substantial question of law involved in the present appeal to call for the jurisdiction of this Court under Section 30 of the Act of 1923.

[13] Appeal is **dismissed**.

(PANKAJ JAIN)
JUDGE

24.09.2024
'R. Sharma'

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