

GAHC010164722010



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : MFA/266/2010**

NATIONAL INSURANCE CO. LTD.  
REPRESENTED BY ITS REGIONAL MANAGER, BHANGAGARH,  
GUWAHATI-5

VERSUS

MD. SAFIUR RAHMAN : 10000  
2:RUPAK KR. BHOWMIK

2:RUPAK KR. BHOWMIK

**Advocate for the Petitioner** : MR. D MAZUMDAR

**Advocate for the Respondent** : MR. S K TALUKDAR

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGMENT & ORDER (CAV)**

**Date : Date: 24.01.2024**

The appellatant insurance company has preferred this appeal under Section 30 of the

Workmen's Compensation Act, 1923 (in short 'WC Act') (corresponding to Employees' Compensation Act) against the judgment and award dated 20.02.2007 passed by the learned Commissioner of Workmen's Compensation, Dhubri in WC Case No. 22/2005 awarding a compensation of Rs.3,74,364/- on the ground of alleged loss of vision of one eye of the claimant.

2. The basic fact involved in this appeal is that the claimant filed the claim petition before the commissioner of Workmen's Compensation, Dhubri by stating that he was employed as driver of the vehicle No.AS-15-8411. On 16.01.2005, at about 1 pm, when the vehicle driven by him was proceeding towards Dhubri from Goalpara side and when the vehicle reached near Hatipota market near Chapar P.S., the vehicle met with an accident when another vehicle knocked down the front side of the vehicle bearing Nos. As-15-8411 from the front side. Due to the alleged accident, the front looking glass got broken into pieces and the splinters from the pieces of broken glass pierced into the eye of the claimant for which he sustained grievous injuries on his eyes. Soon after the accident, the claimant was rushed to the Salkocha outpost and informed the matter. The police took the claimant to the Salkocha Health Centre for immediate treatment. Thereafter, the claimant took treatment at Sankardev Netralaya at Guwahati. The claimant further stated that he was operated twice at Sankardev Netralaya at Guwahati and he had lost normal vision of his right eye. Due to complete loss of vision of his right eye, he could not drive the vehicle and lost his permanent profession of driving.

3. After the accident, a case was registered vide Chapor PS Case No. 41/2005. At the relevant time of accident, vehicle was insured with the appellant.

4. The appellant insurance company on receipt of notice filed written statement, denying the fact that claimant was the driver of the vehicle AS-15-8411 who sustained injuries from the accident and was physically disabled and the accident arose in course of employment of the claimant.

5 The owner of the vehicle also submitted his written statement stating that he was employer of the Workman/ claimant who suffered injury in the course of his employment. He also stated that the vehicle was duly insured with the National Insurance Company at the

relevant time of accident. Hence, denied his liability towards the claimant.

6. The claimant was examined himself as PW-1 and exhibited some documents including Exhibit-14, the certificate issued by the District Medical Board, Dhubri certifying his disability to the extent of 75 %.

7. Learned counsel for the appellant has submitted that the finding arrived at by the learned Commissioner on the basis of Exhibit-14, the certificate of the doctor that the claimant had suffered 75% permanent disability is not sustainable in law as because the medical officer was not examined to prove the fact in question. By referring the judgment of *Narayan Chakraborty –vs- Swapan Debnath* reported in 2007 (I) GLT 735, learned counsel for the appellant submits that the examination of doctor who issued the disability certificate is essential and in the absence of evidence of doctor, it is not permissible for the court to assess the disability factor only on the basis of the certificate issued by the doctor. But the learned commissioner failed to appreciate the essential requirement of law.

8. It is also submitted by the learned counsel for the appellant that the Exhibit-14, disability certificate was issued in a printed format and there is no indication in the disability certificate as to whether the disability was permanent or temporary nor does it indicate as to on what basis, the issuing authority found that the claimant suffered disability of 75 %.

9. It is also the submission of learned counsel for the appellant that the learned Commissioner, Workmen's Compensation failed in error in granting interest of Rs.70,568/- calculating the same on the basis of interest @ 9% per annum from the date of accident i.e. 16.01.2005 on the amount of award. But under Section 4-A (3) (a) of WC Act, the grant of interest is permissible only when there is a default in paying the compensation due within one month from the date it falls due. But in the instant case, at the time of passing the award, the commissioner granted the compensation although at that stage, the question of default does not arise.

10. The last limb of argument of learned counsel for the appellant is that the determination of compensation by the Commissioner on the basis of 75 % permanent disability is not sustainable when there is no finding by the Commissioner that there was any loss of earning capacity of the claimant. As such, the award is not sustainable in law and

liable to be set aside.

11. In support of his submission, the learned counsel has placed reliance on the following case laws:

1. 2008 (Suppl) GLT 329 ( United India Insurance Co. Ltd. –vs- Manorjan Das & anr.)
2. 2000 (2) GLT 567 ( New India Assurance Company Ltd. Vs- Sanjit Kumar & anr.)
3. 2007 (2) SCC 349 : (National Insurance Company Ltd.–Vs- Mubasir Ahmed & anr.)
4. 2008 (suppl) GLT 332 (New India Assurance Company Ltd. V-s Tarun ch. Das & anr.)

12. None appears for the respondent /claimant.

13. As the case is pending since 2010, no further time is allowed to argue the matter on behalf of the respondent. Hence, the judgment is delivered on merit on the basis of the documents available in the record.

14. This court while admitting the appeal on 20.12.2010, framed the following substantial question of law-

*(i) Whether the learned Commissioner, Workmen's Compensation was justified in taking the loss of earning capacity of the workman at 75 %, on the basis of the disability certificate in view of the allegation that the workman had received injury in one of his eyes and also in view of the percentage of loss of earning capacity as mentioned in part-2 of Schedule of Workmen's Compensation Act, 1923 (now Employees Compensation Act 1923) in respect of loss of one eye without complication, the other being normal, which is required to be taken into consideration while assessing the loss of earning capacity under Section 4 (1) ( C) (ii), in view of explanation II to the said provision.*

*(ii) Whether the learned Commissioner was justified in awarding interest under Section 4-A (3) of the 1923 Act from the date of accident.*

15. It is an admitted fact that no medical practitioner was examined to assess the loss of earning capacity of the claimant. The Exhibit-14 was issued by Convenor, District Medical Board, Dhubri and District Social Welfare Officer, Dhubri on 05.10.2006 which reads as follows-

*“Certified that Safiar Rahman age 30 years son of Anowar Ali of village Ward No.4 , Gauripur, District Dhubri, Assam has appeared before District Medical Board on 25.09.2006. The District Medical Board after careful examination of Safiur Rahman had assessed the disability to the extent of 75 %.”*

16. From Exhibit-14, it cannot be ascertained as to who had put his signature as convenor of District Medical Board, Dhubri. It is also not stated in Exhibit-14 who were the doctors examined the petitioner and on what basis, they had assessed the disability of the claimant to the extent of 75 %. In fact, the submissions made by the appellant, therefore, is factually correct. As the medical practitioner was not examined, WC Commissioner delivered the judgment without making the assessment of loss of earning capacity of the claimant with regard to the provision of Part-II of Schedule –I under Section -4 (1) ( c) of the Act at the time of assessing loss of earning capacity for the purpose of Section 4 (1) ( c) (ii) of the Act. Explanation II under Section 4 (1) © is quoted below-

*“ Explanation –II- In assessing the loss of earning capacity for the purpose of sub-clause (II), the qualified medical practitioner shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule-1.”*

17. There is no doubt that so far as Scheduled injuries are concerned, the statute had already laid down the extent of loss of earning capacity. In case of permanent total disablement, the loss of earning capacity is 100% under Part-1 of the Schedule -1. Part-II of the Schedule-1 deals with other injuries belonging to the category of permanent and partial disablement. But in Exhibit-14 nothing has been mentioned regarding permanent loss of vision of the claimant along with corresponding loss of earning capacity. Under Section 4-(1) ( c) (ii) of the Act, the WC Commissioner has been given jurisdiction to make compensation with respect to those injuries by arriving at the finding as to loss of earning capacity from the

injuries sustained by the workmen in course of his employment. It has been specifically laid down in the provision that such a loss of earning capacity as assessed by the qualified medical practitioner has to be taken into consideration for the purpose of calculating the compensation amount. Under Explanation-II of this provision, a qualified medical practitioner is duty bound to have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule-1.

18. In the instant case, the admitted position is that no qualified medical practitioner was examined to assess the loss of earning capacity of the claimant in relation to his injuries i.e. loss of permanent vision of his right eye. The Exhibit-14, disability certificate was not issued by medical practitioner. The WC Commissioner delivered the judgment on the basis of exhibit-14, disability certificate showing the disability of the claimant to the extent of 75 %. Hence, the judgment of the WC Commissioner is not in conformity with the mandate of law under Explanation –II of Section 4 (1) (C) of the Act. Therefore, the assessment made vide Exhibit-14 is not an assessment within the meaning Section 4 (1) (C) (ii) of the Act. Hence, the first substantial question of law is decided in favour of the appellant and in the negative.

19. Regarding second substantial question of law, it is in regard to the power of the WC Commissioner to award interest on the awarded amount. Section 4 (a) of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. The statute nowhere states when the compensation falls due. The due date for compensation may vary from case to case. In the case of death of workman, in course of employment or in case of Scheduled permanent disability the due date for payment of compensation may be the date of accident itself. This is because the employer and for that the insurance company must be aware of the quantum of compensation to be paid to the workman. In case of death, compensation is paid under Section 4 (1) (a) of the Act and in case of scheduled injury the loss of earning capacity is prescribed under the statute in the schedule. The employer and for that the insurance company however cannot determine the quantum of compensation in case of non-schedule injury because in that event, it is the assessment made by the commissioner on the basis of the opinion of the qualified medial practitioner and so until and unless such assessment is made by the jurisdictional authority, the employer cannot understand as to what compensation should be paid to the workmen. In such event, the compensation must

be paid only after adjudication is made. Thus, in case of non scheduled injury, the due date for compensation will be within the period of one month from the date of adjudication in terms of Section 4 (a) (ii) of the Act. Unless and until the adjudication is made, the employer cannot make payment of compensation and so under Section 4 (A) (3), it is provided that if the payment is not made within a period 30 days, then the WC Commissioner shall direct for payment of simple interest @ 12 % per annum or at such higher rate not exceeding the maximum lending rate of scheduled bank. Here in this case, the injury involved is a non-scheduled one. Hence, commissioner committed error in granting interest even on the date of adjudication itself. Accordingly, the second substantial question of law is also decided in favor of the appellant.

20. In the result, the appeal is allowed.

21. Impugned judgment dated 20.02.2007 passed by the learned Commissioner of Workmen's Compensation, Dhubri in Case No. WC 22/2005 is hereby set aside.

22. The matter is remanded back to the court of WC Commissioner for making the assessment afresh.

23. Considering the fact that the workman was driver of the vehicle who met with an accident, if the amount deposited by the appellant and withdrawn by the claimant from the office of WC Commissioner, may not be taken back as he might have spent the same.

24. The appeal stands disposed of.

25. Send back the LCR.

**JUDGE**

**Comparing Assistant**