

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 420/2018  
(ARISING FROM SLP (C) NO.1059 OF 2015)

SHAIKH OSMANALI CHOUS

PETITIONER(S)

VERSUS

NEW INDIA ASSURANCE CO. LTD. & ANR.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. The appellant approached the Commissioner, Workmen's Compensation, Latur, Maharashtra for compensation in which it was held that he lost two toes of his left leg and that there were also burn injuries. The appellant was a driver. By order dated 09.07.2012 the Commissioner, Workmen's Compensation awarded compensation of Rs.2,79,367/- with interest @ 12% per annum from the expiry of one month from the date of the accident till realization. The insurer, respondent No.1 herein, challenged the award before the High Court. The High Court as per the impugned order reduced the compensation to a meager sum of Rs.83,664/-.

3. Despite service of notice there is no appearance for Respondent No.1/Insurance Company.

4. Be that as it may, we have heard the learned counsel for the appellant and learned counsel for Respondent No.2, who is the owner of the vehicle. We also gone through the impugned judgment. We find

absolutely no discussion as to the basis for reducing the compensation. On the contrary, the High Court has endorsed the findings of fact as recorded by the Commissioner, Workmen's Compensation regarding the injuries. But, according to the High Court, it was not possible that the claimant has lost earning capacity by 100%. But that was not the views of the Commissioner, Workmen's Compensation. The discussion is available at paragraphs 15 and 16 of the judgment of the Commissioner, Workmen's Compensation, which are extracted below:-

"15) The applicant has raised the plea that he has sustained permanent physical disability and total loss in his earning capacity by the injuries caused in accident. To prove this aspect he has examined qualified medical practitioner Dr. Kazi at Exh.U-19. He has deposed that on radiological and clinical examination of applicant he found the loss of 4<sup>th</sup> and 5<sup>th</sup> toe of left feet and hypoesthesia and loss of weak grip of right hand, both feet, he assessed permanent physical disability to the extent of 21%. The applicant is unable to drive in future and because of that he has assessed total loss in his earning capacity. Accordingly he has issued certificate at exh.U-20 and U-21 respectively. The Respondent No.2 has cross examined him but he has not challenged the calculation of assessment of permanent physical disability on the basis of particulars given by medical officers. No doubt the Respondent has tried to say that the medical officer of Dist. Hospital Tandur has not mentioned the injuries caused to applicant except the head

injury. It is pertinent to note that the FIR is lodged on day of incident itself. In FIR there is mention of injuries caused to leg and hand of applicant. Therefore mere non mentioning of injury by medical officer in one simple chit, is not sufficient to disbelieve the story and testimony of applicant and medical officer. Therefore, there is no substance in plea of respondent. On this count it is clear that in accident the applicant sustained permanent physical disability to the extent of 21% as deposed by qualified medical practitioner.

16) It is true, there is no specific formula to evaluate the loss of earning capacity. On perusal of injuries i.e. amputation of 4<sup>th</sup> and 5<sup>th</sup> toe of left leg of applicant, it seems that he can walk properly. Though the applicant is unable to drive the vehicle in future, but he can do other work for earning as observed in the case of Palraj vs. Divisional Controller reported in 2011 AAC 393 (SC). Till today the applicant has not applied to the RTO for cancellation of his driving licence. Though the validity period of driving licence is over on 12.6.09, the applicant has not taken steps prior to expiry of validity period and used such licence till its expiry. On taking into consideration the loss of toes and loss of grip feet, we can assess his loss to the extent of 70% equated with loss of the use of limb i.e. left feet below the hip. I hold accordingly and answer issue No.3 in partly affirmative."

5. In that view of the matter, at paragraph 18,

having regard to the functional disability (though that expression as such is not used by the Commissioner, Workmen's Compensation), compensation was awarded and the computation details are available at paragraph 18, which reads as follows:-

18) While determining issues No.1 to 3 and issue No.5 it is observed that the applicant met to an accident during course of his employment with Respondent No.1 having monthly wages of Rs.4,000/- and at that time he was having age 46 years and both the Respondents are jointly and severally liable to pay the compensation. The monthly wages Rs.4000/- equated to 60% and such wages Rs.2400/- multiplied with relevant factor 166.29 with reference to age 46 years, and reduced equated with loss of earning capacity to the extent of 70%, the applicant is entitled for compensation to extent of Rs.2,79,367/-."

6. Unfortunately, the High Court has not referred to any of these discussions while reducing the compensation to 1/3rd of what has been awarded by the Commissioner, Workmen's Compensation. It may be seen that an appeal before the High Court against an award of the Commissioner, Workmen's Compensation is only on a substantial question of law. We do not find that there was any substantial question of law raised by the Insurance Company either.

7. In the above circumstances, we are of the view that the impugned order is to be set aside and that of the Commissioner, Workmen's Compensation is to be restored. Ordered accordingly.

8. The appeal is allowed, as above.

9. Pending applications, if any, shall stand disposed of.

10. There shall be no orders as to costs.

.....J.  
[KURIAN JOSEPH]

.....J.  
[AMITAVA ROY]

NEW DELHI;  
JANUARY 16, 2018.