

B. LAKSHMANA ETC.

v.

DIVISIONAL MANAGER, NEW INDIA ASSURANCE
COMPANY LIMITED ETC.

(Civil Appeal Nos. 11381-11386 of 2013)

JULY 1, 2013.

[GYAN SUDHA MISRA AND KURIAN JOSEPH, JJ.]

WORKMEN'S COMPENSATION ACT, 1923:

s.4 – Assessment of loss of earning capacity – By qualified, and registered medical practitioner – High Court setting aside order of Workmen's Compensation Commissioner on the ground that X-rays of workmen on which doctor assessed disability were not produced – Held: Under s.4, it is sufficient if the loss of earning capacity is assessed by a qualified and registered medical practitioner – In the instant case, there is no dispute with regard to competence of the doctor issuing disability certificate – Impugned order of High Court is set aside and orders of Commissioner are restored.

s.30 – Appeal – Substantial question of law – Held: Under the scheme of the Act, Commissioner is the final authority on questions of fact and the first appellate court is the final authority on the question of law – In the instant case, there is no question of law much less a substantial question of law arising for consideration u/s 30 – High Court erred in exercising jurisdiction u/s 30 in the absence of any material irregularity or perversity in the judgment of the Commissioner.

s.4-A – Interest – Held: Commissioner only awarded 12% which is the statutory interest u/s 4A.

A In the instant appeals arising out of the order of the
Workmen's Compensation Commissioner awarding
compensation to the workmen, victims of an accident,
the question for consideration before the Court was:
B whether the High Court was justified in setting aside the
order of the Workmen's Compensation Commissioner
and dismissing the applications of the workmen victims-
appellants for compensation, on the ground that x-rays
of the workmen-victims based on which the doctor
assessed the disability should have been produced.

C Allowing the appeals, the Court

HELD: 1.1. Under s. 4 of the Workmen's
Compensation Act, 1923, it is sufficient if the loss of
D earning capacity is assessed by a qualified and
registered medical practitioner. The insurer does not
have a case that PW7, who after examining the victims
and their X-rays, issued the disability certificate, is not a
qualified medical practitioner. He is a registered medical
E practitioner and he is an orthopedic surgeon. There is
no dispute with regard to his competence to issue the
disability certificate. Even otherwise, the Commissioner
is not an officer qualified and competent to assess the
disability with reference to the medical records,
F particularly the x-rays. [para 7-8] [294-C-G]

1.2. Under the scheme of the Act, the Workmen's
Compensation Commissioner is the final authority on
questions of fact and the first appellate court is the final
G authority on the question of law. In the instant case, there
is no question of law much less a substantial question
of law arising for consideration u/s 30 of the Act for the
High Court. The High Court has simply ventured to re-
appreciate the evidence and record a different finding,
H which is not within its jurisdiction u/s 30 of the Act, in

B. LAKSHMANA v. DIVISIONAL MANAGER, NEW 291
INDIA ASSURANCE

the absence of any material irregularity or perversity. A
[para 12] [295-D-F]

1.3. The common impugned order of the High Court
is set aside and the orders of Workmen's Compensation
Commissioner are restored. As far as the rate of interest B
is concerned, the Commissioner only awarded 12%
which is the statutory interest u/s 4A of the Act. [para 13-
14] [295-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. C
11381-11386 of 2013.

From the Judgment and Order dated 02.02.2011 of by the
High Court of Karnataka Circuit Bench at Dharwad in M.F.A.
No. 12360/2007 c/w MFA Nos. 12361/07, 12362/07, 12363/
07, 12365/07 (WC). D

Kiran Suri, Nakibur Rahman Barbhuiya, Ritika Gambhir for
the Appellants.

J.P.N. Shahi, Neeraj Shekhar for the Respondents. E

The Judgment of the Court was delivered by

KURIAN, J. 1. Appellants are claimants before the
Workmen's Compensation Commissioner, Sub Division-I,
Bellary, Karnataka State. They were working as driver, cleaner F
and loaders in a lorry bearing registration no. MH-12/AQ-4458.
On 13.08.2008, the lorry met with an accident when it fell down
in a ditch and all the appellants suffered various injuries. They
filed separate petitions before the Workmen's Compensation
Commissioner under Section 10 of the Workmen's G
Compensation Act, 1923 (hereinafter referred to as 'the Act').

2. Second respondent herein admitted that the vehicle
belonged to him and he also admitted the accident. The first

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A respondent herein-the insurer, admitted that the vehicle was duly insured. The owner did not contest the petition. However, the insurer, on permission, contested the petition. The claimants gave evidence as Pws 1 to 6 and the qualified medical practitioner-an orthopedic surgeon, who issued the disability certificate, was examined as PW7.

3: Exhibits P1 to P17 were marked. Exhibit P1 is the First Information Report on the accident. Exhibit P2 is the Charge-sheet and Exhibit P3 is the Registration Certificate. Exhibits P5 to P16 are the Wound Certificates and the Disability Certificates, respectively of the appellants and P17 is the Insurance Policy. The Wound Certificates and Disability Certificates were duly proved by PW7.

4. Though the insurer filed an application for calling for the medical records from the primary health centre where the appellants were initially treated, the same was dismissed since disability certificate issued by the registered medical practitioner had already been admitted in evidence. Application for reassessment of disability by a panel of doctors was also dismissed on the same ground as per common order dated 04.07.2007 of the Workmen's Compensation Commissioner.

5. Based on the evidence on record, by order dated 19.07.2007, the Workmen's Compensation Commissioner awarded compensation as follows:

"As per the calculation of compensation amount the ages of the petitioners and obtaining their respective salaries already decided factor. As per workmen compensation Act the petitioners ages and obtaining net salaries at the rate of 60% as calculated and they sustained loss and both are calculated and the compensation award amount has been fixed as follows:

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B. LAKSHMANA v. DIVISIONAL MANAGER, NEW 293
INDIA ASSURANCE [KURIAN, J.]

Name of the petitioners	Salary per month Rs.	Age	Relevant factor	Loss of Resmune-ration as per	Entitle get comp-ensation award amount
Lakshmana Driver	4000	31	205.95	25	1,23,570
Boya Ramanna	3500	30	207.98	30	1,31,027
Honurappa Loader	2600	29	209.92	30	98,242
Ramanna Loader	2600	27	213.57	30	99,950
Sunkhappa Loader	2600	28	211.79	25	82,598
Mariyanna Loader	2600	29	209.92	25	81,868

The fact of the accident intimated before respondent, the fact before the court was held with discussion and this court fixed the compensation amount to the petitioners as per workmen compensation Act, 1923 as per section 4(A)(3)(A) and the compensation award amount shall be tender to the petitioners with one month from the date of judgment and deposited the same before this court at the rate of 12% interest to the said award amount."

6. Aggrieved, the insurance company filed appeals before the High Court. The appeals have been disposed of by the impugned judgment dated 02.02.2011. The High Court set aside the order passed by the Workmen's Compensation Commissioner and dismissed the applications for compensation mainly holding that the claim was not properly proved before the Workmen's Compensation Commissioner. The High Court was of the view that x-rays of the appellants, based on which PW7 assessed the disability, should have been produced. To quote from paragraph-

A 18 of the impugned judgment:

“Evidence on record would also clearly go to show that claimants have not only withheld the valuable evidence if any available with them for being tendered namely X-ray reports and as such an adverse inference has to be drawn against claimants for withholding best evidence available with them from being produced and being scrutinized by the Workmen’s Compensation Commissioner at the time of adjudication their claim petitions.”

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C 7. We are afraid that the stand taken by the High Court cannot be appreciated. All the records were seen by PW7-registered medical practitioner, who is an orthopedic surgeon, before issuing the disability certificate. He has also seen would certificate issued by the primary health centre. Only after examining the appellants with reference to the wound certificate and the x-rays taken by him, PW7-orthopedic surgeon issued the disability certificate. In such D circumstances, it is not necessary for the appellants, who are applicants before the Workmen’s Compensation Commissioner, to produce the x-rays before the Workmen’s Compensation Commissioner. Even otherwise, the Commissioner is not an officer qualified and competent to assess the disability with reference to the medical records, particularly the x-rays. That is the field of E medical experts, the medical practitioner. PW-7-registered medical practitioner has duly assessed the disability with reference to the relevant records and on examining the appellants. There is no case that he has not seen the records or that he has manipulated the records of treatment or he has misread the same. He has also F physically examined the appellants after taking x-ray. In such circumstances, it is not required to have the x-rays before the Commissioner.

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G 8. Under Section 4 of the Act, it is sufficient if the loss of earning capacity is assessed by a qualified and registered medical practitioner. The insurer does not have a case that PW7 is not a qualified medical practitioner. He is a registered medical practitioner and he is an orthopedic surgeon. There is no dispute with regard to his competence to issue the disability certificate.

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H 9. All that apart, the order dated 04.07.2007 of the Workmen’s

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B. LAKSHMANA v. DIVISIONAL MANAGER, NEW 295
INDIA ASSURANCE [KURIAN, J.]

Compensation Commissioner rejecting the prayer made by the insurer for calling for records and for referring the appellants to the panel of doctors, was not challenged by the insurer, and, thus, it has become final.

10. Under Section 30 of the Act:

“... no appeal shall lie against any order unless a substantial question of law is involved in the appeal...”

11. In the instant case, the Workmen’s Compensation Commissioner has already returned a finding of fact with regard to the accident, the injury suffered by the appellants and the extent of loss of earning capacity of the appellants as a result of the accident. The said finding is based on the evidence duly proved before the Commissioner. There is no material irregularity or perversity in the appraisal of evidence. There is no case that the evidence was inadmissible. In such circumstances, the appellate court should not have entertained the appeal as there is no substantial question of law.

12. Under the scheme of the Act, the Workmen’s Compensation Commissioner is the final authority on questions of fact and the first appellate court is the final authority on the question of law. In the instant case, there is no question of law, much less a substantial question of law arising for consideration under Section 30 of the Act for the High Court. The High Court has simply ventured to re-appreciate the evidence and record a difference finding, which is not within its jurisdiction under Section 30 of the Act, in the absence of any material irregularity or perversity.

13. As far as the rate of interest is concerned, the Commissioner only awarded 12% which is the statutory interest under Section 4A of the Act.

14. For the reasons stated above, the appeals are allowed, the common impugned judgment of the High Court is set aside and the orders dated 04.07.2007 of the Workmen’s Compensation Commissioner are restored.

15. There is no order as to costs.

Rajendra Prasad

Appeals allowed.