2026:AHC:212523

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1039 of 2015

The Oriental Insurance Co. Ltd.

.....Appellant(s)

Versus

Sri Atul Kumar And Anr.

.....Respondent(s)

Counsel for Appellant(s)	:	Subash Chandra Srivastava
Counsel for Respondent(s)	:	, Nigamendra Shukla

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Learned counsel for the appellant and learned counsel for the respondents are present.

2. The present appeal has been filed challenging the order dated 24.02.2015 passed by the Commissioner under the Employees' Compensation Act, 1923/Labour Commissioner, U.P., Ghaziabad, in Case No. E.C.A. 41 of 2011.

3. Briefly stated, the respondent-claimant preferred a claim petition before the Commissioner under the Employees' Compensation Act, asserting that he was employed as a cleaner of a Tata 407 vehicle owned by respondent no. 2. It was further stated that on 30.03.2007, at about 9:00 p.m., while he was travelling from Ghaziabad to Modinagar, the vehicle overturned in an attempt to save a cyclist who suddenly appeared in front of it, resulting in serious injuries to both legs of the respondent-claimant. A disability certificate indicating 75% permanent disability was produced before the learned Commissioner. However, upon considering the disability certificate and the nature of the injuries sustained by the respondent-claimant, the learned Commissioner assessed his loss of earning capacity at 100% and accordingly awarded compensation of Rs. 5,27,880/- in his favour.

4. Learned counsel for the appellant submitted that the learned Commissioner failed to consider Schedule I to the Employees' Compensation Act, which prescribes the percentage of loss of earning capacity in cases of specified injuries. It was contended that amputation of a leg below the knee attracts a prescribed percentage of loss of earning capacity, and the learned Commissioner erred in assessing the respondent-claimant's loss of earning capacity at 100%, which exceeded even the percentage of permanent disability mentioned in the disability certificate.

Accordingly, the finding recorded by the learned Commissioner assessing the loss of earning capacity at 100% is liable to be set aside.

5. Per contra, learned counsel for the respondent-claimant submitted that the loss of earning capacity is required to be determined by taking into consideration the nature of the employment and occupation of the injured person. Physical disability and functional disability are distinct concepts, and even a relatively limited physical disability may, in a given case, result in a complete loss of earning capacity. In the present case, the respondent-claimant was employed as a helper/cleaner on a Tata 407 vehicle, and the amputation of his leg below the knee rendered him incapable of performing similar work in the future. Therefore, the assessment of his loss of earning capacity at 100% by the learned Commissioner does not warrant any interference. It was further submitted that the grounds raised by the appellant involve questions of fact and do not give rise to any substantial question of law. Accordingly, the appeal is liable to be dismissed as not maintainable.

6. Heard learned counsel for the parties and perused the impugned judgment and order. It is well settled that an appeal under Section 30 of the Employees' Compensation Act, 1923, is maintainable only when a substantial question of law is involved. The grounds raised by the appellant primarily relate to the assessment of disability and loss of earning capacity, which are factual matters considered by the learned Commissioner on the basis of the material available on record. In the absence of any substantial question of law arising for consideration, no interference with the impugned order is warranted.

7. Accordingly, the impugned order is upheld, and the appeal is dismissed.

October 9, 2026
Ujjawal

(Anil Kumar-X,J.)

Digitally signed by :-
UJJAWAL
High Court of Judicature at Allahabad