(2005) 07 GAU CK 0020

Gauhati High Court

Case No: None

Goljan Nesha		APPELLANT
	Vs	
Gammon India Ltd. and Others		RESPONDENT

Date of Decision: July 28, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees Compensation Act, 1923 - Section 30

Citation: (2007) ACJ 1341 : (2005) 106 FLR 1169 : (2005) 3 GLT 390

Hon'ble Judges: B.K. Roy, C.J; P.G. Agarwal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B.K. Roy, C.J.
The following question of law was formulated at the time of admission of this appeal u/s 30 of the Workmen''s Compensation Act:

Whether the Commissioner under the Workmen''s Compensation Act had the jurisdiction either to revise or to review its own order?

2. The relevant facts are:

2.1. Appellant is widow of late Akbar Ali alias Akbar Hussain, the workman, who sustained grievous injuries in an accident in course of his employment on 4.4.1995 and succumbed to his injuries later on in the night.

2.2. Appellant claimed due compensation. Her application was registered as W.C. Case No. 68 of 1995 by the Commissioner, Workmen''s Compensation, Dhubri. Despite objection, her claim was allowed by the Commissioner by passing an award of Rs. 1,62,683 along with simple interest at the rate of 12 per cent per annum thereon from

4.4.1995 to 30.4.1998 to the tune of Rs. 58,566 and directed respondent No. 4, the insurer, National Insurance Co. Ltd., to deposit the aforesaid amount within 30 days from the date of receipt of the award.

2.3. Respondent No. 4 filed a petition seeking revision/review of the award on 21.6.1998 on the grounds, inter alia, that the quantum of compensation awarded should have been as per the rate provided in the Workmen''s Compensation Act, 1923 as the accident had taken place prior to the amendment of the said Act.

2.4. Similar petition was also filed by respondent Nos. 1 and 2 on 31.7.1998.

2.5. These petitions were heard by the Commissioner without serving notice on the appellant, who vide his order dated 24.8.1998 revised his award.

The submissions:

3. Learned Counsel appearing on behalf of the appellant contended that the appeal/ revision/review being creature of statute, and in the absence of any such provision in Workmen''s Compensation Act and/or the rules framed thereunder, the Commissioner had exceeded his jurisdiction to review his earlier order. Rule 32(2) permits, after pronouncement of the judgment, no addition or alteration other than correction of clerical and/or arithmetical mistake arising from any accidental slip or omission.

4. Mr. P.C. Deka, the learned senior advocate appearing on behalf of the respondents on the other hand, contended that as the Commissioner realised that he has not passed his judgment/award in terms of the unamended Act, thus the earlier order being void and nullity, he has rightly corrected it and thus the appeal be dismissed.

Our findings:

5. Rule 32(2) of the Workmen''s Compensation Rules, 1924 reads as under:

(2) The Commissioner, at the time of signing and dating his judgment, shall pronounce, his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

Thus, under the statute only correction of clerical or arithmetical mistakes have been permitted.

6. The law that review is to be expressly conferred on the authority concerned by the statute is well settled by Apex Court.

6.1. In Harbhajan Singh Vs. Karam Singh and Others, the Apex Court held as under:

There is no provision in the Act granting express power of review to the State Government with regard to an order made u/s 42 of the Act. In the absence of any such express power it is manifest that the Director, Consolidation of Holdings, cannot review his previous order of 3.4.1958 dismissing the application of Harbhajan Singh u/s 42 of the Act. It follows, therefore, that the order of the Director dated 29.8.1958 is ultra vires and without jurisdiction and High Court was right in quashing that order by the grant of a writ under Article 226 of the Constitution.

6.2. In Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, it was held as follows:

(4) ...It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government''s order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority.

7. It is true that the Commissioner should have passed his orders in terms of the unamended provisions of the Act, but we do not accept the submission that the order in question was void or nullity, which could have been revised and/or reviewed through the applications filed by the respondents. Commissioner has committed an apparent error of law in invoking jurisdiction, which was not available to him.

8. In the result, we allow this appeal and set aside the impugned order, but considering the peculiar facts and circumstances, we make no order as to costs.

9. Before parting, it is clarified that the respondent may avail recourse to such remedy, which may be available to them and to make a prayer for condonation of delay, if permissible in law.