

Oriental Insurance Co. Ltd. Vs Renu Devi and Others

Court: Patna High Court

Date of Decision: Jan. 22, 1997

Acts Referred: Workmens Compensation Act, 1923 " Section 30(1), 31(1)

Citation: (1997) ACJ 808 : (1997) 2 LLJ 10

Hon'ble Judges: N. Pandey, J; A.K. Ganguly, J

Bench: Division Bench

Advocate: Shashi Bhushan Prasad, for the Appellant; Nalin Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Pandey, J.

The appellant (insurer) being aggrieved by an order of the Deputy Commissioner-cum-Commissioner, Workmen's

Compensation, dated October 27, 1994, passed in C.W.C. No. 9 of 1993 has preferred this appeal u/s 30 of the Workmen's Compensation Act

(in short "the Act"). By the impugned order, the insurer was directed to pay a sum of Rs. 76,885.20 (Rupees seventy-six thousand] eight hundred

and eighty-five and twenty paise) to the claimants as compensation for the death of Rajendra Ojha on account of an accident, which took place in

the night of August 16/17, 1991 while he was driving a truck of respondent-employer bearing registration No. WML 2337.

2. It appears when this case was taken up before a learned Single Judge of this Court, a preliminary objection was raised by the respondents on

the maintainability of this appeal due to non- compliance of the mandatory requirement of the third proviso of Sub-section (1) of Section 30 of the

Act. It was contended that in; order to maintain this appeal under Sec.30 of the Act, the appellant was required to enclose a certificate by the

Commissioner with the memorandum to the effect that he had deposited with him the amount payable under the order appealed against. Since the

appellant failed to do so, the appeal was liable to be dismissed at the threshold as not maintainable.

3. No doubt at the later stage a certificate in terms of the aforesaid requirement was filed by way of abundant precaution, but learned Counsel

appearing on behalf of the appellant, however, submitted that having regard to language of third proviso to Sub-section (1) of Section 30 of the

Act, particularly the word "employer", the insurer (appellant) not being employer of the deceased, had no obligation to comply with the said

requirement. In support of his contention learned Counsel placed reliance on a decision of ; a learned Single Judge of Madhya Pradesh High Court

in the case of National Insurance Co. Ltd. Vs. Sarfuddin and Others, and the case of New India Assurance Company Ltd. Vs. Kanchan Bewa

and Others, . Therefore, having regard to the important question as also since no decision of this Court was cited, the case was referred to a

Division Bench at the state of admission itself.

4. I have heard learned Advocates appearing on behalf of both the parties as also perused the terms of reference, therefore, this appeal is being

disposed of at the stage of admission itself.

5. Before considering the crucial question, it would be relevant to notice that there is no dispute in this case that at the time of accident late

Rajendra Ojha was in the employment of Gulab Chand, the owner of the truck (Respondent No. 5) on a monthly salary of Rs.900/-. This is , also

not in dispute that as per terms of the Insurance Policy, appellant-insurer was liable to any compensation on behalf of the respondent-employer.

6. In order to appreciate the legal contentions urged on behalf of the parties, it is desirable to extract the relevant provision of Section 30(1)(a) with

its third proviso hereunder:

30. Appeals. -(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim

in full or in part for a lump sum.

Provided further that no appeal by an employer under Cl.(a) shall lie unless the memorandum of appeal is accompanied by, a certificate by the

Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

7. From the facts as well as statutory provisions, noticed above, there is no dispute that appellant (insurer) is entitled to file appeal against the

impugned order and award under Clause (a) of Sub-section (1) of Section 30 of the Act. The only dispute is whether in absence of the compliance

of the requirement of the third proviso of Section 30 as referred above, the appeal can be maintainable.

8. In Saijuddin"s case, (supra) the learned Single Judge of the M.P. High Court while elaborating the question, has held as follows:

.... The restriction contained in the proviso to Section 30 of the Act for depositing the amount is expressly limited to an appeal filed by the

employer and since the insurance company is not the employer, that restriction is not applicable to the Insurance Company.

A reference to that judgment would reveal that learned Judge did not consider the relevant provisions of law nor has he given reasons thereof.

Although he relied upon the decision of a Division Bench of the same High Court in the case of Northern India Insurance Co. Branch Indore Vs.

Commissioner for Workmens Compensation and Others, , but has failed to appreciate the real question determined in that case. The question that

arose for consideration in that case was whether the writ petition filed on behalf of the Insurance Company against the order of the Commissioner

for Workmen"s Compensation without filing appeal as contemplated u/s 30(1) of the Act was maintainable. Therefore, the Division Bench had no

occasion to consider the question whether for non-compliance of the mandatory requirement as required under third proviso of Section 30(1) an

appeal was maintainable by the insurer. As a matter of fact, another learned Single Judge of the same Court in the case of The New India

Assurance Co. Ltd. Vs. Mohinder Singh and Another, , following a decision of the Division Bench of Kerala High Court in the case of New India

Assurance Co. v. M. Jayarama Naik 1982 Lab IC 1235 (Kerala) had rendered a decision contrary to Saifuddin "s case and held that deposit of

the amount of compensation at the time of presentation of appeal by the insurer is also mandatory.

For a better appreciation, it would be useful to quote the relevant part of paragraph 7 of the judgment of Jayarama Naik"s case, with regard to

scope of the third proviso to Section 30(1):

.....the insurer is only stepping into the shoes of the insured, the employer, and the defence is not qua insurer but in the name of the insured

and in his place. An appeal preferred on such grounds, if successful, will jeopardise the employee"s right to recover the compensation from the

employer also. What the insurer seeks in such an appeal is that the insurer may be found to be not liable to pay the compensation, and

consequently, the insurer also may be held to be not liable. The primary relief sought for is the first mentioned relief and the other relief is

consequent to the grant of that relief. Hence, such an appeal is preferred by the insurer for and on behalf of the employer and in his stead, though

the aim of the insurer is to exonerate his own liability, what the insured cannot do by himself, viz. filing of an appeal without complying with the

requirements of the third proviso to Section 30 of the Act, cannot be done by another on his behalf. So the third proviso to Section 30 of the Act

governs such appeals.

9. In *New India Assurance Co. Ltd. Vs. Sankar Behera and Others*, , the Orissa High Court referring to Section 30 of the Act has held thus:

..... .Once the insurer is made liable under the Act and the language of Section 30 of the Act does not provide as to who would file the appeal, a

reasonable construction would be that any person aggrieved by the order can prefer an appeal. The insurer has been aggrieved by the order of

Commissioner in this case fixing the liability on it and accordingly, the appeal by the insurer is maintainable.

10. There is no doubt that a literal construction of the third Proviso gives an impression that an appeal brought by employer u/s 30(1) shall lie

before the High Court. But this cannot be ignored that an insurer steps into the shoes of the insured. In that view of the matter, the insurer is always

bound by the order under award. Because the insurer having undertaken to indemnify the insured, has to be placed in the category of a judgment-

debtor for the purpose of construction of Section 30. Reference can usefully be made to a decision of the Bombay High Court in the case of *Mrs.*

Khwajabi and Ors. v. Gulabkhan Jamalkhan Pathan and Anr. 1979 Lab. IC 347.

11.1 am also reminded of a judgment of the Apex Court in the case of *A.A. Haja Muniuddian Vs. Indian Railways*, , where it was held that the

very object of construction of a statute should be to advance cause of justice and not to defeat it, which can be noticed hereunder:

..... .A view which advances the cause of justice must be preferred to the one which defeats it. We are, therefore, of the opinion that the

Tribunal adopted a narrow interpretation of the relevant provisions of the Act in coming to the conclusion that the Act as well as the Rules did not

permit invocation of Order XXXIII of the Code. The view taken by the Tribunal results in a person not having the means to pay the fee prescribed

for preferring a claim being left without a remedy. Such a view would result in gross injustice. The Tribunal has the power to lay down its own

procedure and as stated earlier Section 18(1) does not preclude it from invoking the provisions of Order XXXIII of the Code if the ends of justice

so require. When an indigent person approaches the Tribunal for compensation for the wrong done to him, the Tribunal cannot refuse to exercise

jurisdiction merely because he does not have the means to pay the fee. In such a situation we think the ends of justice require that the Tribunal

should follow the procedure laid down in Order XXXIII of the Code to do justice for which it came to be established.

12. In the case of *United India Insurance Co. Ltd. Vs. Kashimsab and others*, a Division Bench of the Karnataka High Court while dealing with

identical question, held that the word ""employer"" as found in the third proviso to Section 30 of the Act, must be construed so as to give effect to

the scope and object of the Act or with a view to advance cause of justice and not to defeat it. Reference can be made to the relevant portion of

paragraph 20 of the report as under:

..... to construct the proviso-3 to Section 30(1) of the Act, we should not confine to the literal meaning of the Act, but, on the other hand, we

must hold, having regard to the object of the proviso and the fact that the insurer could be adjudged as if a judgment debtor under the decree, that

in a case where an appeal is filed by the insurer challenging the judgment and award of compensation in favour of the workman, it cannot be

entertained unless it is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable

under the order appealed against, or otherwise, the very object of the proviso would be defeated. In the instant case, since the insurer has not filed

the certificate along with the appeal for having deposited the compensation amount awarded. by the Commissioner, the appeal is not maintainable.

It is not possible to accede to the contention of Sri Mahesh that the Parliament intended to exempt the insurer from, complying with the

requirement of the third proviso to Section 30(1) of the Act.

13. Thus, having regard to different decisions, as noticed above, I answer the preliminary objection as to the maintainability of the" appeal u/s

30(1)(a) Proviso 3 of the Act against the insurer.

14. But I have already noticed that the appellant, subject to its right and contention on this issue, has subsequently by abundant precaution

complied with the requirement by filing a certificate of the Commissioner, hence I would proceed to examine the case of the parties on merit.

15. Learned Counsel for the appellant pointed out that manner of occurrence and identification of the deceased was quite doubtful, because the

claimants have identified the deceased on the basis of his photograph. He also contended that a case was registered about the theft of the truck,

therefore, in these backgrounds, unless there was a proper identification of the dead body or finding of a Court about the theft of truck, it was not

proper for the Commissioner to award compensation under the provisions of the Act.

16. In my view, the submission of the learned Counsel is quite unfounded. I have already noticed that undisputedly, late Rajendra Ojha was

employed as a driver of the truck in question by the employer-respondent. There is no denial by the employer that in the fateful night on account of

accident Sri Ojha sue-cumbed to the injuries. This is also not in dispute that the vehicle in question at the time of death of Mr. Ojha was insured

with the appellant company. The identification of the deceased was also made by the wife of the deceased and other family members, including

close relations on the basis of the photograph, which was made available by the police. Therefore, there cannot be any scope of mistaken

identification.

17. Thus, having given anxious consideration of the facts and circumstances of the case as noticed above, I affirm the impugned award and dismiss

the appeal as devoid of any merit. But the parties are left to bear their costs.

A.K. Ganguly, J.

18. I agree.