

(1999) 02 OHC CK 0001
In the Orissa High Court
Case No : A.H.O. No. 32 of 1998

Balia Hansada

APPELLANT

Vs

National Insurance Company Limited and Others

RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 20(1), 20(2)

Citation : (1999) 1 OLR 464

Hon'ble Judges : Pradipta Ray, J;A. Pasayat, J

Bench : Division Bench

Advocate : Susanta Kumar Dash, S.K. Mishra, B. Mohapatra, C.S. Dash and Surya Kanta Dash, for the Appellant; N.K. Mishra, B. Das Mohapatra, M. Rath for Respondent No. 1, N.C. Pati, A.K. Mohapatra, S. Mishra, A.K. Das and P.K. Khuntia, for the Respondent

Judgement

A. Pasayat, J.—This appeal under the Letters Patent is directed against the judgment of learned Single Judge of this Court in Misc. Appeal No. 795 of 1996. National Insurance Company Ltd. (hereinafter referred to as the "insurer") had filed said appeal on several grounds.

2. Background facts leading to filing of the appeal are as follows:

Balia Hansada (respondent No. 1) filed a claim petition along with Maya alias Sunia Hansada, respondent No. 2 claiming compensation in respect of death of one Chamma Hansada alias Besra. The said Champa was claimed to be the wife of respondent No. 1 Balia Hansada. In W.C. Case No. 55/94 which was filed before the Commissioner for Workmen's Compensation-cum-Assistant Labour Commissioner, Balasore (in short, the "Commissioner") it was stated that Champa died on 7.6.1994 in an accident involving a dumper bearing registration No. ORM 8301 belonging to respondent No. 3 Birat Chandra Dagara (hereinafter referred to as the "owner"). On getting notice the owner filed written statement admitting the alleged accident, and death of Champa but shifted liability of compensation to the insurer. Balia Hansada was examined as P.W. 1 and another

person was examined as P.W. 2 claiming to be an eye witness to the accident. The Commissioner held that the claimants were entitled to compensation and accordingly awarded compensation of Rs. 70,942/-. The same was challenged in Miscellaneous appeal u/s 30 of Workmen's Compensation Act, 1923 (in short, the "Act"). According to the insurer relationship between the claimants and the deceased was not proved. There is enough material to doubt the genuineness of the claim in view of change of surname from "Besra" to "Hansada". The Commissioner held that the deceased was aged about 35 years at the time of accident and was getting Rs. 900/- as salary per month. In the appeal it was urged that conclusion regarding relationship are erroneous and therefore, the Commissioner was not justified in making any award. Further, the circumstances under which two other cases (W.C. Case Nos. 4 and 5 of 1994) were filed at Baripada before the Commissioner for Workmen's Compensation were dropped.

3. Learned Single Judge was of the view that on account of wrong legal advice to Balia Hansada, respondent No. 1, difficulty was caused to the parties. Learned Judge proceeded on the basis that the Commissioner had no jurisdiction to decide the case instituted by Balia Hansada u/s 22 of the Act. It was observed that the Commissioner lacked jurisdiction to pass the award in question and therefore, the same was non est in the eye of law. The award was, therefore, set aside and it was directed that the Commissioner for Workmen's Compensation, Baripada was to take up the matter by restoring W.C. Case Nos. 4 and 5 of 1994 which were dropped by him.

4. During course of hearing, learned counsel for appellant brought to our notice notification SRO No. 90/94 issued in exercise of powers conferred by Sub-section (1) of Section 20 of the Act. Said notification was published in the Orissa Gazette dated 11th February, 1994.

5. From serial No. 4 of the schedule, it is clear that Assistant Labour Commissioner attached to Labour Directorate, Bhubaneswar has jurisdiction over the whole State of Orissa, and as per serial No. 10, Assistant Labour Commissioner, Balasore has jurisdiction over the Revenue Districts of Balasore, Bhadrak and Mayurbhanj. It is fairly accepted by the learned counsel for parties that the said notification holds the field so far as this case is concerned.

6. Section 20(1) of the Act has empowered the State Government to appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification published in the Official Gazette. It is also clear from Sub-section (2) of Section 20 that more than one Commissioner can be appointed for an area. However, where more than one Commissioner has been appointed for any area the State Government may by general or special order regulate the distribution of business between them. It appears from the aforesaid notification that officers named at serial Nos. 1 to 4 have been appointed as Commissioners for Workmen's Compensation for the whole State of Orissa. Besides those four officers, three other officers have been appointed as Commissioners for Workmen's Compensation for the Revenue District of

Mayurbhanj. They are Joint Labour Commissioner/ Deputy Labour Commissioner, Cuttack (Serial No. 5, Item No. 10), Assistant Labour Commissioner, Balasore (Serial No. 10, Item No. 3) and Additional District Magistrate, Mayurbhanj with headquarters at Baripada (Serial No. 33). Nothing has been produced before us or before the learned Single Judge to show any distribution of business among the Commissioners appointed for the Revenue District of Mayurbhanj. Therefore, it cannot be said that Assistant Labour Commissioner, Balasore had no jurisdiction to decide a Workmen's Compensation Case arising within the Revenue District of Mayurbhanj. In total three claim cases, i.e., two before the Additional District Magistrate, Baripada and one before the Assistant Labour Commissioner, Balasore were filed on the same cause of action. In view of the aforesaid notification, these officers had the jurisdiction to entertain and decide the claim cases filed before them. However, W.C. Case No. 55 of 1994 was disposed of earlier by the Assistant Labour Commissioner, Balasore. As the W.C. Cases Nos. 4 and 5 of 1994 filed before the Additional District Magistrate, Baripada involved the same claim, the said two cases were rightly dropped. The view taken by the learned Single Judge that the Assistant Labour Commissioner, Balasore had no jurisdiction does not appear to be correct. The attention of the learned Single Judge does not appear to have been drawn to the above notification, inasmuch as the said notification was not brought on record.

7. That bring the position, we set aside the judgment and order of the learned Single Judge and remit the Misc. Appeal for fresh consideration on merit. The Additional District Magistrate-cum-Commissioner for Workmen's Compensation, Baripada will not take any action in W.C. Case Nos. 4 and 5 of 1994 till the disposal of the Misc. Appeal, and thereafter act in accordance with the ultimate decision in the Misc. Appeal.

The appeal is allowed to the extent indicated above.

Pradipta Ray, J.

8. I agree.