
(2009) 07 JH CK 0056
In the Jharkhand High Court

Branch Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 07 JH CK 0056

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The petitioner in this writ application has challenged the order dated 25.09.2004 (Annexure-6) passed in W.C.C.C. No. 1/2000-2001 by the District Certificate Officer, Hazaribagh (Respondent No. 2) referred to in this application as "Certificate Court", whereby the petitioner insurance company has been directed to pay a sum of Rs. 85,505/-, being the interest on the amount of compensation payable to the claimant namely the Respondent No. 3.

3. Facts of the case in brief are as follows:

(i) The respondent No. 3 had filed an application before the Commissioner, Workman Compensation, Hazaribagh claiming compensation for the premature death of her husband who was employed as a Khalasi in the truck belonging to the Respondent Nos. 4 and 5. Such death having occurred in course of his employment when the truck met with a road accident.

(ii) After registering a case, the Commissioner, Workman Compensation, issued notices to the owners of the vehicle namely the employers/Respondent Nos. 4 and 5 and the Insurance Company, directing them to appear and submit their written statements.

(iii) The employers did not appear in the proceeding before the Commissioner.

The petitioner Insurance Company however appeared before the Commissioner and submitted its written statement denying its liability to pay compensation on the ground that no evidence to the effect that deceased was under the employment of the Respondent Nos. 4 and 5 was brought on record and that the factum of employment has not been admitted by the owners of the vehicle.

(iv) On the basis of the materials available on record, the Commissioner allowed the claim of the applicant/Respondent No. 3 in terms of his order dated 01.02.2000 passed in W.C. Case No. 41 of 1998.

(v) The amount of compensation assessed at Rs. 2,26,380/- was ordered to be paid by the Respondent Nos. 4 and 5 and if the awarded amount was not paid within 30 days from the date of award, then the amount was to carry interest @ 12% per annum.

(vi) Upon receipt of notice from the Certificate Court, the Respondent Nos. 4 and 5 appeared before the Commissioner and filed an application for modification of its earlier order.

(vii) Upon being satisfied that the deceased husband of the applicant was employed under the Respondent Nos. 4 and 5 as a Khalasi of the vehicle belonging to the employers, and on being satisfied that the vehicle was covered under the Policy of Insurance under the petitioner Insurance Company, the Commissioner modified its earlier order to the extent that the amount of compensation awarded, should be paid by the petitioner Insurance Company.

(viii) Pursuant to the modification made in the order, a requisition was accordingly forwarded to the Certificate Officer and on the basis of the requisition, a notice was issued to the petitioner to pay the awarded compensation amount.

(ix) Upon receipt of the notice, the petitioner promptly paid the compensation amount of Rs. 2,26,380/-.

4. The grievance of the petitioner is that even after the petitioner had paid the demanded compensation amount of Rs. 2,26,380/-, yet, by the subsequent impugned order, the Certificate Officer has made a demand calling upon the petitioner to pay a further sum of Rs. 85,505/- claiming the same to be the interest on the amount of compensation payable to the claimant/Respondent No. 3.

5. Assailing the impugned order, Sri Alok Lai, learned Counsel for the petitioner would raise the following grounds:

(i) The impugned order is illegal and passed without jurisdiction by the Certificate Officer. Learned Counsel explains that the modified requisition issued and forwarded by the Commissioner to the Certificate Officer was for recovery of the compensation amount of Rs. 2,26,380/- only from the petitioner and accordingly a Certificate under the provisions of Section 5 of the P.D.R. Act was prepared.

Neither the requisition of the Commissioner, nor the Certificate prepared, included any amount of interest to be recovered.

(ii) The modification of the original award of the Commissioner though made for imposing the liability upon the petitioner Insurance Company, but the modification conspicuously avoided reference to payment of any interest. Such omission was basically on the ground that the Insurance Company cannot be made liable to pay any interest on the compensation amount.

(iii) The Certificate Officer, being essentially an Executing Court, has committed a serious error by going behind the decree of the Commissioner and importing there-from, a misconceived inference that the requisition issued by the Commissioner did also purport to demand recovery of the amount of interest from the petitioner.

6. Sri Lal has referred to and relied upon the following judgements in support of his contention that the insurer has no liability to pay interest under the Workmen's Compensation Act:

(i) New India Assurance Co. Ltd. Vs. Harshadbhai Amrutbhai Modhiya and Another, .

(ii) New India Assurance Company Ltd. Vs. Mosmat Gondia Devi and Others, .

Emphasizing his contention that the payment of interest rests solely upon the employer under the Workmen's Compensation Act, learned Counsel relies for support upon the Judgment passed in the case of F.J. Narayan v. Union of India and Ors. 2004 ACJ 452.

7. Per contra, Sri A.K. Rashidi, learned Counsel for the respondent Nos. 4 and 5 would argue by raising a preliminary objection that the instant writ application is not maintainable in view of the fact that there is a provision of appeal against the order of the Certificate Officer and the petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India and neither can this Court, in exercise of its writ jurisdiction, sit as a Court of appeal.

Learned Counsel in this context, refers to and relies upon the Judgment of the Supreme Court in the case of Mrs. Rena Drego Vs. Lalchand Soni, Etc., .

Learned Counsel would argue further that from the award as passed by the Commissioner, it would be evident that the petitioner Insurance Company, had misled the Commissioner to believe that it had no liability for payment of compensation under the contract of insurance. Such act, was infact a fraud practiced in the proceeding before the Commissioner and which had led the Commissioner to direct payment of the awarded amount of compensation to be made by the Respondent Nos. 4 and 5. It was later, when the facts were placed by the Respondent Nos. 4 and 5 before the Commissioner in proper perspective that the error was rectified and the award was modified by the Commissioner, in terms of which the amount of awarded compensation together with interest was

made payable exclusively by the Insurance Company. Learned Counsel explains further that the Award of the Commissioner has to be read in totality and the Certificate Officer cannot be faulted on the purported ground that he has gone behind the "award" or "decree" as the learned Counsel for the petitioner would want to explain.

8. Learned Counsel for the Respondent No. 3 is present and submits that the Respondent No. 3 is entitled for the payment of interest. No controversy has been raised on behalf of the Respondent No. 3 regarding the rival claims of the petitioner and that of the Respondent Nos. 4 and 5.

9. The facts which emerge from the rival submissions of the learned Counsel for the parties are as follows:

(i) Admittedly the Respondent Nos. 4 and 5 are the owners of the vehicle involved in the present case in which the husband of the applicant/Respondent No. 3 was employed as a Khalasi and thereby, the Respondent Nos. 4 and 5 were the employees of the deceased husband of the claimant. Upon finding such fact that the deceased had died in course of his employment, the Commissioner under the Workmen's Compensation Act had awarded an amount of Rs. 2,26,380/- by way of compensation which was initially made payable by the employers namely the Respondent Nos. 4 and 5. Such amount, if not paid within 30 days from the date of order, was to carry interest @ 12% per annum.

(ii) Despite notices, the employers namely the Respondent Nos. 4 and 5 did not appear before the Commissioner. The petitioner insurance Company did appear and denied its liability even though admitting that the vehicle was covered under the policy of insurance under it.

(iii) The initial order of the Commissioner was modified imposing the liability upon the Insurance Company.

10. The modification as made by the Commissioner in his original order, declares that the amount of compensation as awarded, shall be paid by the Insurance Company. As rightly pointed out by the learned Counsel for the petitioner, no further or separate order has been made by the Commissioner imposing the liability of payment of interest upon the Insurance Company.

It further appears that requisition for recovering the amount of compensation was forwarded by the Commissioner to the Certificate Officer and on the basis of which a Certificate was prepared. On perusal of the Certificate, it appears that the amount sought to be recovered and as declared in the certificate, was confined only to the amount of compensation i.e. Rs. 2,26,380/-, and no more. The Insurance Company, upon receipt of notice, had admittedly deposited the amount promptly. Yet, after such deposit was made, the Certificate Officer proceeded to issue a further demand by the impugned order directing the petitioner to pay a further amount as being interest on the compensation amount.

11. The question raised by the petitioner is whether the Certificate Officer could

have passed the impugned order thrusting upon the Insurance Company a liability which the Commissioner under the Workmen's Compensation Act has not imposed? and whether the Certificate Officer could have looked into the award passed by the Commissioner for drawing any such inference for imposing liability upon the Insurance Company to pay interest?

12. As observed above, the modified award had directed that the amount of compensation shall be payable by the Insurance Company. The direction does not include nor impose a liability upon the Insurance Company for payment of interest on the amount of compensation. The requisition, as forwarded by the Commissioner to the Certificate Officer, was only for recovering the amount of compensation and accordingly the Certificate for recovery was prepared. The petitioner had promptly deposited the entire amount of compensation as per the award. If the Commissioner, under the Workmen's Compensation Act, had intended that the Insurance Company should be liable to pay interest also on the compensation amount, then the Commissioner would have had to pass a specific separate order for the same and for this, the Commissioner would have had to consider on the basis of the terms of the contract of insurance as to whether the Insurance Company had also undertaken liability to pay interest on the amount of compensation.

13. Considering the above facts, in absence of a separate specific order or direction contained in the modified award of the Commissioner, the Certificate Officer could not possibly look into the award and draw an inference that the Insurance Company should be, made liable to pay the amount of interest.

14. The Workmen's Compensation Act imposes a primary liability upon the employer to pay compensation along with interest on the awarded amount of compensation. Thus, the statutory liability under the Workmen's Compensation Act is on the employer. There is no statutory liability on the Insurance Company. The entitlement of the claimants under the Workmen's Compensation Act is to claim the compensation from the employer. As between the employer and the insurer, the rights and obligations would depend upon the terms of insurance contract. Therefore if a liability is sought to be imposed upon the insurer, the same should derive its source through the terms of the insurance contract.

15. Learned Counsel for the petitioner submits that there is no liability incurred by the Insurance Company under the insurance contract with the owners of the vehicle namely the employers of the deceased husband of the claimant. This stand of the petitioner has not been disputed by the Respondent Nos. 4 and 5. The obvious inference is that the insurer had excluded itself from the liability for payment of interest under the Workmen's Compensation Act. The liability of the Insurance Company therefore, is confined only to indemnify the employer against the amount of compensation ordered to be paid in the Workmen's Compensation Act.

16. The contention of the learned Counsel for the Respondent Nos. 4 and 5 that

the Insurance Company had practiced fraud in the proceeding before the Commissioner, Workmen's Compensation is also misconceived. As explained by the learned Counsel for the petitioner, the denial of the liability, as advanced by the insurance Company, was on the ground that the claim of the applicant that the deceased was under employment of the owners of the vehicle, was not established and therefore the Insurance Company would not own the liability to pay compensation. Admittedly, the owners of the vehicle did not appear before the Commissioner either to affirm or deny that the deceased was under their employment and that he had died in course of employment.

17. The Judgment relied upon by the counsel for the Respondent Nos. 4 and 5 in the case of Mrs. Rena Drego (Supra) would not apply to the facts of the present case in view of the fact that there appears a patent illegality in the impugned order of the Certificate Officer who has exceeded his jurisdiction and this Court has therefore the jurisdiction to interfere with such patently illegal order.

In the light of the reasons discussed above, I find merit in this application. Accordingly, this application is allowed. The impugned order dated 25.09.2004 (Annexure-6) passed in W.C.C.C. No. 1/2000-2001 by the District Certificate Officer, Hazaribagh (Respondent No. 2) is hereby quashed.