

(2006) 02 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) No. 2346 of 2003

Engineering and Allied Services (P) Limited

APPELLANT

Vs

Joint Labour Commissioner-cum-Commissioner for
Workmen's Compensation and Others

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Citation : (2006) 1 OLR 397 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S. Patnaik, for the Appellant; Biswajit Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application is directed against the order dated 14.1.2003 passed by the Commissioner-cum-Workmen's Compensation, Bhubaneswar in W.C. Case No. 159 of 2000 rejecting the petition filed by the Petitioner for setting aside the order dated 17.1.2000.

2. The case of the Petitioner is that opposite party No. 2 had filed a claim petition before the Commissioner claiming compensation of Rs. 2.24 lakhs on account of death of her son, who was electrocuted in course of his employment on 14.3.2000 at about 12.00 noon. After receipt of notice, the Petitioner submitted the information in Form-II on 26.9.2000. It was intimated in the said Form that the deceased was insured under M/s. New India Assurance Company Limited under Janata Personal Accident Policy bearing Policy No. 4755010501915. The grievance of the Petitioner is that though this fact was intimated to the Commissioner, Insurance Company was not made a party to indemnify the compensation and fixed the liability on the Petitioner. It is also the case of the Petitioner that no point of time, opportunity was given to it for filing a written statement or participating in the proceeding.

3. The learned Counsel Shri Pattnaik appearing for the Petitioner at the time of

hearing drew attention of the Court to the order dated 4.11.2000 and submitted that pursuant to the said order, notice was received by the Petitioner on 10.11.2000 whereas hearing was closed on 8.11.2000 and the case was disposed on 17.11.2000. Thereafter, the Petitioner could not get an opportunity to participate in the proceeding. The learned Counsel appearing for the claimant/opposite parties submitted that the impugned award was not an ex parte award. Therefore, the impugned order is legal and correct.

4. From the certificate copy of the order sheet, Annexure-2, it appears that there is no dispute that the Petitioner appeared before the Commissioner pursuant to notice in the said case and submitted that the workman had been insured under New India Assurance Company Limited under Janata Personal Accident Policy and, therefore, it has no liability for compensation. Thereafter, the Petitioner neither filed any written statement nor contested the proceeding. No objection was filed on behalf of the Petitioner to implead the Insurance Company as a party to the proceeding. From the order sheet, it appears that the Petitioner not only admitted employment but also admitted accident and it is also stated that the accident took place in course of employment. Since the Petitioner did not contest any further after filing of Form-II, the Tribunal heard the matter on 8.11.2000 and disposed of the same on 17.11.2000. In view of the above, the award passed by the Commissioner cannot be said to be an ex parte award so far as the Petitioner is concerned. Since it is not an ex parte award, the application filed by the Petitioner for setting aside the order dated 17.11.2000 on the ground that it was an ex parte award, in my view, was a misconceived the petition. The learned Commissioner was, therefore, right in rejecting the petition.

5. Since the learned Counsel for the Petitioner submitted that the Insurance Company should have been a party and the liability should have been saddled on the Insurance Company, I also perused the finding of the learned Commissioner in this regard. The said question was decided in Issue No. 4. The Commissioner while answering the said issue observed that the policy produced by the Petitioner is for a group of employees including the deceased and the maximum claim in the policy is Rs. 1,00,000/- (one lakh) for life of one workman. There is nothing on record to show that the premium of the policy was paid by the Petitioner. On the other hand, it was contended by the learned Counsel for the claimant that the premium for the said policy was being deducted from the wages of the deceased. In absence of any material to show that the premium was being paid by the Petitioner, it can not take advantage of such policy.

6. In view of the discussions made above, I do not find any merit in this writ application. Accordingly, the same is dismissed.