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**(1987) 03 OHC CK 0013**  
**In the Orissa High Court**

Managing Director, O.R.T. Co. Ltd.

APPELLANT

Vs

S. Rama Mohan Rao

RESPONDENT

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**Date of Decision :** 23-03-1987

**Acts Referred:**

Employees Compensation Act, 1923 — Section 28, 29, 30

**Citation :** (1987) 1 ACC 441 : (1988) ACJ 184 : (1987) 64 CLT 135 : (1988) 1 LLJ 200

**Hon'ble Judges :** S.C. Mohapatra, J

**Bench :** Single Bench

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**Judgement**

S.C. Mohapatra, J.—Employer is the appellant in this appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). He has deposited the compensation amount awarded out of which the workman has been allowed to withdraw Rs. 7,000/-

2. The workman was a bus driver of the appellant. In course of his employment, he received multiple fractured injuries resulting from an accident of which fracture of his right wrist is one. He remained under treatment for eight months on account of the fractures. Coming to the conclusion that the fracture of the wrist has completely disabled the workman, the Commissioner has awarded compensation for total disability which is the grievance of the employer in this appeal.

3. Mr. J.K. Tripathy, the learned Counsel for the employer-appellant, submitted that the decision of the Commissioner is not supported by materials on record. Further, the Commissioner has not given due weight to the opinion of the medical expert and misread the same. Lastly Mr. Tripathy submitted that the Commissioner has failed to exercise jurisdiction vested in him which has rendered his judgment vulnerable.

4. Whether the workman is totally disabled is a question of fact. Where the finding of fact is arrived at by the Commissioner without any material, it would

be a surmise and would thus become a question of law to be considered by this Court overcoming the bar u/s 30(1) first proviso of the Act. Where the materials on record would not reasonably lead to the finding of fact, a question of law would arise. Similarly, where material piece of evidence has not been taken into consideration which if considered would negative the finding of fact, a question of law would arise. Again misreading an evidence would also be a question of law. All the three conditions are absent in this case. The medical expert has stated in his examination that on account of fracture, the workman has been totally disabled. He has also stated in his evidence that he has given such a certificate and a driver cannot drive in one hand. This is a pure appreciation of fact and no question of law arises on this score. The finding cannot be interfered with in appeal.

5. Mr. J.K. Tripathy, the learned Counsel for the appellant, submitted that much prior to the application for compensation by the workman before the Commissioner, the employer filed an agreement in statutory Form I which has been objected to by the workman. The order-sheet of the Compensation case dated 26th September 1981 reads as follows:

Perused the memorandum of agreement filed by the Personal and Enforcement Officer, O.R.T. Co. Ltd., Berhampur, as well as the objection petition of Sri S.R. Mohan Rao, driver, O.R.T. Co. Ltd., Berhampur. Hence direct both the parties to appear on 29th October 1981 at 10 a.m. for hearing.

At no stage thereafter the Commissioner has taken into consideration whether to register the agreement u/s 28 of the Act. Section 28(1) of the Act reads as follows:

28. Registration of agreements:

(1) Whether the amount of any lumpsum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that:

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b)....

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise or an agreement as its the amount of is compensation payable to a woman or a person under a legal disability ought not to be registered by reason

of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

6. The language of Section 28(2) requires the Commissioner to dispose of question of registration of the agreement either directing registration or refusing to register the same. The effect of non-registration has been provided in Section 29 of the Act. Therefore, being a statutory authority, it was the duty of the Commissioner to consider the validity of the said agreement as per law. Excepting referring to the agreement, the Commissioner has not given any reason why the agreement would be refused to be registered.

7. Employer is a Company and is, thus, a juristic person having no living mind. It is to act through its officers. On account of negligence of the officers, the Commissioner's attention was not drawn to the agreement and to the objection to decide the question first before entering into merits of the claim. No prayer had been made on behalf of the Company before the Commissioner, that the officer who was conducting the case was guilty of laches for which the same could not be pressed to be decided first. In these circumstances, the Company must take the responsibility for the laches of its officers. The workman should not be allowed to suffer. It is open to the Company to get itself reimbursed from its officers for their negligence.

8. In case there is a valid agreement, there is no scope for the Commissioner to give the judgment ignoring the agreement if it finds that the agreement is genuine. Ends of justice would be best served if the Commissioner is directed to consider the question of registering the agreement. Non-consideration of the agreement is an error of law which vitiates the decision. However, the workman should not suffer on that account. The negligence of the officers of the Company has deprived the workman of the compensation awarded for a long period. Since the Commissioner is to consider the question of registration of the agreement u/s 28 of the Act, where the objection of the workman is also to be considered, suffering of the workman can be mitigated by payment of Rs. 1500/- (fifteen hundred) as costs to him by the appellant within three weeks from to-day. On failure to make the payment of the costs as directed within the time stipulated, the impugned judgment of the Commissioner shall stand confirmed. In case the costs of Rs. 1500/- is paid within the time stipulated, the Commissioner is directed to consider the question of registering the agreement as provided u/s 28 of the Act. If the Commissioner would not be satisfied on the materials on record that the agreement cannot be registered, the award being based on materials shall stand confirmed. If the agreement is decided to be registered, the same shall be conclusive.

9. In the result, the appeal is allowed subject to the aforesaid direction. There shall be no order as to costs. The amount in deposit shall continue to be in

deposit until disposal of the application u/s 28 of the Act.