
(2014) 02 GAU CK 0027
In the Gauhati High Court
Case No : Writ Petition (C) No. 2949 of 2006

M/s National Insurance Company Ltd. APPELLANT
Vs
Md. Ramjan Ali and Md. Muktar Hussain RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 9 Rule 13
Constitution of India, 1950 — Article 226
Workmens Compensation Act, 1923 — Section 3

Citation : (2014) 02 GAU CK 0027

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : B.K. Purakayastha, for the Appellant; M. Choudhury, for the Respondent

Final Decision : Disposed Off

Judgement

B.K. Sharma, J.—Heard Mr. B.K. Purakayastha, learned counsel for the petitioner and Mr. M. Choudhury, learned counsel representing the respondent No. 1. None has appeared for the respondent No. 2. This writ petition is against the ex-parte judgment and award dated 31.07.2003, followed by the order dated 04.09.2003 declining to set aside the ex-parte award in WC Case No. 30/2002. The orders have been passed by the Commissioner, Workmen's Compensation, Zone-III, Tezpur. Coming to the facts of the case, the respondent No. 1 preferred a claim petition before the Workmen's Compensation Commissioner (in short Commissioner) on account of injuries sustained by him due to the accident while was engaged in vehicle No. AS 01/E-4858. He was the handiman of the vehicle (Super Bus). Entertaining the claim petition, notice was issued to the owner of the vehicle and so also to the Insurance Company i.e. the petitioner with whom the vehicle was insured. As recorded in the impugned judgment dated 31.07.2003, passed in the case being case No. WC 30/2002, after the initial appearance, the Insurance Company did not submit written statement in spite of granting several adjournments from 07.05.2002 to 02.07.2003. In view of such

absence, the Commissioner decided to proceed ex-parte and accordingly ex-parte hearing was fixed on 23.07.2003, on which date, the claimant appeared and examined himself. Upon hearing the argument advanced by the learned counsel appearing for the claimant, the impugned judgment and award dated 31.07.2003 was passed on the basis of the following issued:-

1. Is there any cause of action of the claim petition?
2. Whether the claim petition is maintainable in the present form?
3. Whether O.P. are liable to pay compensation as claimed by the claimant petitioner?
4. If yes, what relief is the claimant petitioner entitled to?

2. Discussing the facts of the case and the evidence on record, the Commissioner has awarded compensation of Rs. 1,09,189.50/- together with interest @ 9% per annum amounting to Rs. 18,835.18/- and the total amount awarded stands at Rs. 1,28,024.68/-. The Insurance Company was required to deposit the amount with the Commissioner within 30 days from the date of award.

3. After the impugned judgment and award, the Insurance Company i.e. the petitioner filed an application under Order-IX Rule 13 of CPC for setting aside the ex-parte award, which however, was rejected by the 2nd impugned order dated 04.09.2003. In the order, it has been recorded that in spite of granting several adjournments there was no appearance on behalf of the Insurance Company and no written statement was filed. Observing that the Workmen's Compensation Act is a beneficial legislation and the proceeding therein requires speedy disposal, the Commissioner was not inclined to set aside the Ex-parte award and rejected the application by the said order dated 04.09.2003.

4. After the aforesaid development, the Insurance Company filed an Appeal registered as No. MFA 138/2003 against the impugned orders, which was disposed of vide order dated 10.04.2006, holding that the appeal was not maintainable and observation was made that the appellant could approach only the High Court under Article 226 of the Constitution of India.

5. The Insurance Company being not content with the said proceedings, filed the instant writ petition invoking the writ jurisdiction of this Court. The writ petition was entertained by order dated 16.06.2006 and thereafter it was listed on 24.03.2008. On perusal of the order sheet, it is found that the matter was not listed thereafter. However, no stay order is operating against the impugned award. It is submitted that the Insurance Company is yet to pay the amount to the claimant i.e. the respondent No. 1.

6. Mr. Purakayastha, learned counsel for the Insurance Company referring to the provisions of section 3 of the Workmen's Compensation Act, 1923, submits that in the given facts and circumstances, the Insurance Company is not statutorily liable to pay the compensation. As regards the rejection in the prayer for setting

aside the ex-parte order, he submits that due to the fault of the engaged counsel, the Insurance Company should not be made to suffer and that an opportunity of being heard is required to be provided to the Insurance Company. He has also placed reliance on the decision of the Apex Court reported in T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, and also the Division bench decision of the Calcutta High Court reported in (2011) 3 WBLR (Cal) 594 [Sukru Munda vs. National Insurance Company Ltd].

7. Countering the above argument, Mr. Choudhury, learned counsel representing the respondent No. 1, submits that the matter having been delayed considerably requires a final decision. He also submits that there being no proper explanation as required under order IX Rule- 13 CPC towards setting aside the ex-parte award, the Commissioner has rightly rejected the application made by the Insurance Company. Referring to the pleadings in the writ petition, he submits that there is virtual assailment to the order, by which the Commissioner rejected the prayer for setting aside the ex-parte award. He has also placed reliance on the decision of the Apex Court reported in Salil Dutta Vs. T.M. and M.C. Private Ltd., and Bhanu Kumar Jain Vs. Archana Kumar and Another,

8. I have considered the submissions made by the learned counsels for the parties and have also considered the entire materials on record. The impugned award was passed on 31.07.2003 and the application for setting aside the same was rejected on 04.09.2003. By now almost 11 years have gone by. The amount that has been awarded to the claimant is for Rs. 1,28,024.68/- including interest.

9. In New India Assurance Co. Ltd. (supra) the Apex Court discussing the nature and extent of liability of the Insurance Company under the Workmen's Compensation Act, held that such liability is contractual and not statutory. Similar view was taken in Sukro Munda (Supra). Referring to these two decisions, it is submitted by Mr. Purakayastha, learned counsel for the petitioner that the Insurance Company is not statutorily liable to pay compensation.

10. In Salil Dutta (Supra) the Apex Court was concerned with the question of setting aside ex-parte decree. Dealing with the meaning of sufficient cause and also the plea of the defendant that it was sufficiently prevented from appearing in the proceeding, the Apex Court held that the defendant was not entitled to get the order interfered with, by which the decision was arrived at Ex-parte. It was held that in every case, ex-parte order cannot be set aside and that no absolute immunity can be recognized as the same would lead to chaotic situation in the working of the judicial system. It was held that the defendant ought to have been vigilant although it had engaged its own counsel.

11. In Bhanu Kumar Jain (Supra), the Apex Court dealing with an application under Order-IX Rule 13 of the CPC held that the defendant could only avail a remedy available there against to prove an appeal in terms of order 43 Rule- 1. It was further held that one such an appeal is dismissed, the appellant cannot raise the same contention in the first appeal. It was observed that if it is held

that such a contention can be raised both in the first appeal and also in the proceedings arising from an application under Order-IX Rule 13, the same would lead to conflict of decisions which is not contemplated in law.

12. The aforesaid two decisions have been referred to by the learned counsel for the respondent No. 1 to emphasis on the need for early disposal of the proceeding before the Workmen's Compensation Commissioner.

13. As noted above, the proceeding was initiated in 2002 before the Commissioner. The impugned orders were passed way back on 31.07.2003 and 04.09.2003. Because of the proceedings initiated thereafter by way of appeal followed by the instant writ petition, the matter has not attained its finality. On perusal of the records, it is found that the Insurance Company had engaged its counsel by executing a Vokatat Nama in 2002 itself. However, during the period of more than one year, it did not file its written statement. The records have revealed that even on 09.01.2003, an application was made before the Commissioner, praying for time to file written statement on the ground that papers and documents etc were yet to be verified for the preparation of written statement. On the other hand, the claim petition was filed on 22.02.2002 and notice was served immediately thereafter. It is on record that the Insurance Company prayed for time on 07.05.2002 to file written statement on the same ground which was the ground in the application filed on 09.01.2003.

14. From the above, what is seen that there was lack of diligence on the part of the Insurance Company. While it is true that the engaged counsel did not appear on 27.05.2002, 02.07.2003, 23.07.2003 and 29.07.2003, but in between there was appearance on behalf of the Insurance Company and as noted above even on 09.01.2003, prayer was made for adjournment for filing written statement. Thus, there was lapse on the part of the Insurance Company, apart from the fact that the engaged counsel did not appear in the proceeding.

15. In view of the above, I am not inclined to interfere with the impugned orders passed by the Workmen's Compensation Commission in WC Case No. 30/2002. However, I hasten to add that the plea of the Insurance Company that it is not statutorily liable u/s. 3 of the Workmen's Compensation Act, 1923, is kept open to be decided in an appropriate proceeding.

16. This now leads us to the question as to what is the amount the claimant would be entitled to. By the impugned award, he was provided with the compensation amount of Rs. 1,28,024.68/- inclusive of interest. It was further provided that upon failure to deposit the amount within 30 days, the claimant would be entitled to interest @ 9% per annum on the delayed payment.

17. Considering the matter in its entirety and in view of the facts and circumstances involved in this case, it is hereby provided that the Insurance Company shall pay the petitioner an amount of Rs. 1,50,000/- immediately, which will include the principal amount and the interest. Such payment shall be made without any further delay and at any rate not later than 30.04.2014.

18. The amount shall be deposited with the Registry and upon such deposit, the claimant will be entitled to withdraw the same upon proper identification. Writ petition is disposed of accordingly. However, without any order as to costs.