

(2005) 11 OHC CK 0003
In the Orissa High Court

National Insurance Co. Ltd.		APPELLANT
	Vs	
Bidashi Kalo and Others		RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Motor Vehicles Act, 1988 — Section 140, 143

Citation : (2007) ACJ 941

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 preferred by the insurance company against an interim award made in favour of respondent Nos. 1 and 2 by the Commissioner for Workmen's Compensation directing payment of Rs. 50,000.

2. The Workmen's Compensation Case No. 7 of 1999 has been filed by the legal representatives of the deceased Angada Kalo (respondent Nos. 1 and 2) claiming compensation of Rs. 2,00,000, before the Workmen's Compensation Commissioner-cum-Asst. Labour Commissioner, Sambalpur. During the pendency of the said case, respondent Nos. 1 and 2 filed application u/s 140 of the Motor Vehicles Act, 1988 for grant of interim compensation under no fault liability in their favour. The Commissioner by the impugned order dated 24.7.99 taking into consideration the documents filed on behalf of respondents-claimants and after hearing the parties has directed the appellant insurer to deposit Rs. 50,000 as interim compensation u/s 140 of Motor Vehicles Act. Being aggrieved by the said order, the insurance company has preferred this appeal u/s 30 of Workmen's Compensation Act.

3. Mr. S.D. Das, learned senior counsel appearing for the appellant insurance company vehemently argued that the deceased was not a workman under the insured and that the Commissioner has acted contrary to law in allowing the

application for interim compensation u/s 140 of the Motor Vehicles Act even though the said provision is not applicable to a case under Workmen's Compensation Act. Mr. Das in support of his contention has relied upon the decision in case of P.S. Metal Works Vs. Rezwan Ali and Another,

4. Per contra, Mr. D. Rajan, learned Counsel appearing for the respondent Nos. 1 and 2 who are the claimants, submitted that since no substantial question of law is involved in this appeal, the appeal is not maintainable u/s 30 of the Workmen's Compensation Act. He further contended that in view of the provision of Sections 140 and 143 of the Motor Vehicles Act, the application filed by the respondents-claimants for interim compensation is maintainable. He further relied upon the decision in the case of Oriental Insurance Co. Ltd. Vs. Lalita Samal and Others, , of this court. Perusal of the impugned order discloses that Workmen's Compensation Case Nos. 7 and 8 of 1999 are being heard analogously by the Commissioner in which issues have been framed. The Commissioner on considering the application filed by respondent Nos. 1 and 2 for grant of interim compensation u/s 140 of the Motor Vehicles Act, as well as the documents filed by the claimants, such as, certified copies of the F.I.R., case diary, zimanama and the postmortem report and also taking into consideration the provisions of Section 140 of the Motor Vehicles Act came to a conclusion that the appellant insurer is liable to pay the interim compensation of Rs. 50,000 to respondent Nos. 1 and 2.

5. Section 143 of Motor Vehicles Act provides that the provisions of Chapter 10 of the said Act shall also apply in relation to any claim for compensation in respect of death or permanent disablement of any person under Workmen's Compensation Act, 1923, resulting from an accident of a nature referred to in Sub-section (1) of Section 140 of the Motor Vehicles Act and for that purpose, the said provision shall, with necessary modifications, be deemed to form part of that Act (Workmen's Compensation Act).

6. A bare reading of the above provisions of Motor Vehicles Act clearly shows that an application u/s 140 of the Motor Vehicles Act is maintainable in a case filed under the Workmen's Compensation Act for award of compensation. In the case of Oriental Insurance Co. Ltd. Vs. Lalita Samal and Others, this Court while dealing with a similar question has held thus:

(3) The learned Counsel for the appellant initially contended that when the case has been filed before the Workmen's Compensation Commissioner, no interim compensation can be paid to the claimants u/s 140 of the Motor Vehicles Act. However, it has been pointed out by the counsel for the claimants-respondents that Section 143 of the Motor Vehicles Act makes it clear that the provisions of Section 140 are also applicable to claim applications filed under the Workmen's Compensation Act, 1923, in cases arising out of accidents of the nature referred to in Section 140(1). In other words, provisions of Section 143 read with Section 140 make it clear that power of granting interim compensation to claimants is also available to the Workmen's Compensation Commissioner in cases of

accidents arising out of use of motor vehicle as contemplated in the Motor Vehicles Act. Similar view has been expressed by Rajasthan High Court in the decision in Gopali (Smt.) Vs. Bhagchand and Another, . As a matter of fact, the Commissioner has referred to such decision of Rajasthan High Court. In the face of the provisions contained in Section 143, it is fallacious on the part of the appellant to contend that the Workmen's Compensation Commissioner does not have any jurisdiction to grant interim compensation in claim cases before him, where such cases arise out of accidents involving use of motor vehicle, as contemplated in Section 140(1) of the Motor Vehicles Act.

7. The decision of the Supreme Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , was relied upon by the learned single Judge in the above case and it was held that the ratio of the said decision will also be applicable to a case under the Workmen's Compensation Act.

8. With regard to the contention of Mr. Das that no inquiry was conducted by the Commissioner before passing the impugned order, this Court is of the view that as laid down in the decision of the Supreme Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , the Tribunal is required to find out prima facie as to whether the accident has arisen out of the use of a motor vehicle and the said accident has resulted in permanent disablement or death of the person concerned and, as such, an elaborate inquiry is not required to dispose of the application u/s 140 of Motor Vehicles Act. Applying the above ratio, irrespective of the fact that the application u/s 140 of Motor Vehicles Act is filed in a case for compensation under Motor Vehicles Act or under the Workmen's Compensation Act, the Tribunal/Commissioner is not required to conduct an elaborate inquiry for disposing of the said application for interim compensation.

9. In view of the above, I do not find any merit in this appeal which is, accordingly, dismissed. However, the amount of Rs. 50,000 deposited before this Court shall be disbursed in favour of respondent Nos. 1 and 2 along with accrued interest, if any, on proper identification.