

(2016) 04 GAU CK 0036
In the Gauhati High Court
Case No : M.F.A 27 of 2015

National Insurance Company Limited

APPELLANT

Vs

Md. Ful Mamud Sk.

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Employees Compensation Act, 1923 — Section 21

Citation : (2016) 4 ACC 148 : (2016) 150 FLR 80 : (2016) 2 NEJ 432 : (2016) 3 TAC 647

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Ms. R.D. Mozumdar and Ms. B. Borah, Advocates, for the Appellant; Mr. S.C. Biswas, Mr. S. Biswas, Md. E. Ahmed and Mr. M. Islam, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Manojit Bhuyan, J. (Oral) - Heard Ms. R.D. Mozumdar, learned counsel representing the appellant National Insurance Company Limited as well as Mr. S. Biswas, learned counsel representing the respondent nos. 1 and 2. It appears from the Office Note dated 04.02.2016 that notice upon respondent no. 3 has been duly served.

2. The present appeal was admitted on the following substantial question of law:

"Whether in view of non-compliance of proviso to Section 21 of the Employees Compensation Act, 1923, the impugned judgment and award has been vitiated?"

3. Section 21 of the Employees Compensation Act, 1923 (relevant part) reads as follows:

"21. Venue of proceedings and transfer.-[(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which-

- (a) the accident took place which resulted in the injury: or
- (b) The [employee] or in case of his death, the dependant claiming the compensation ordinarily resides; or
- (c) the employer has his registered office: Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:"

4. The said provision contemplates that appropriate proceedings have to be done by or before the Commissioner of the area in which any of the options at (a) or (b) or (c) are applicable. The first proviso to Section 21 brings in an exception to the effect that if an accident had taken place other than the area where the proceedings have been initiated, the same can only be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident had taken place, by giving a notice in the manner prescribed to the Commissioner having jurisdiction over the area where the accident had taken place. The first proviso also contemplates that notice be also given to the State Government concerned.

5. Having noticed the provisions under Section 21 of the Employees Compensation Act, 1923, the records of the case assumes great significance. Apparently, the accident occurred at a place called Masli on National Highway 44, Tripura under Manu Police Station. In fact, a case had also been registered before the said Police Station. Considering the prescription at Clause (a) of subsection (1) of Section 21 of the Act, apparently the Workmen's Commissioner at Bongaigaon did not have the jurisdiction to proceed with the matter. However, there is a substantial compliance of clause (b) and (c) of sub-section (1) of Section 21 of the said Act, inasmuch as, the claimants who are the dependants of the deceased originally resides at Bongaigaon and the employer also has his registered office at Bongaigaon. This aspect of the matter appears from the records of the case. To bring in the jurisdiction of the Workmen's Commissioner at Bongaigaon to proceed with the case even in the face of compliance of (b) and (c) above, the first proviso places an embargo in exercising jurisdiction, save and except, by a notice in the manner prescribed to the Commissioner having jurisdiction over the area in which the accident had taken place. The crux of the matter is to ascertain whether or not the prescription under the first proviso had been complied with by the Commissioner at Bongaigaon.

6. The Lower Court Records in original have been perused. There is indeed a Notice dated 01.12.2014 issued under the hand of the Commissioner, Workmen's Compensation, Abhayapuri, Bongaigaon addressed to the Commissioner, Workmen's Compensation, Tripura, Agartala showing due compliance of the first proviso to Section 21. The said notice conforms to Form-A as prescribed under Rule 3 of the Workmen's Compensation (Venue of

Proceedings) Rules, 1996.

7. The substantial compliance of the first proviso to Section 21 of the Act cannot, therefore, take away the jurisdiction of the Workmen's Commissioner at Bongaigaon. This being the only point for determination, the substantial question of law so framed do not come to the aid of the appellant. In other words, the judgment and award cannot be construed to have stood vitiated on grounds of non-compliance of the first proviso to Section 21 of the Employees Compensation Act, 1923. As a matter of fact, the compliance of the first proviso, also finds disclosure in the judgment and award itself.

8. In view of the above, the appeal is devoid of merit and the same stands dismissed. The judgment and award passed by Workmen's Compensation, Bongaigaon is upheld. The balance awarded amount remaining unpaid and deposited before the Office of the Workmen's Commissioner, Abhayapuri, Bongaigaon shall forthwith be released to the claimants on an application so made. No costs.