
(2001) 06 AP CK 0112
In the Andhra Pradesh High Court

New India Assurance Co. Ltd. and Others	APPELLANT
Vs	
A. Senapathi Reddy and Others	RESPONDENT

Date of Decision : 11-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Compensation Act, 1923 — Section 19, 20, 30

Citation : (2002) ACJ 2095 : (2002) 2 ALD 685 Supp : (2002) 3 ALT 24 : (2002) 3 LLJ 418

Hon'ble Judges : Ghulam Mohammed, J;B. Subhashan Reddy, J

Bench : Division Bench

Judgement

B. Subhashan Reddy, J.—All these LP As arise under Workmen's Compensation Act, 1923 (for short "the Act"). The appellants are the insurance companies and they suffered an order of payment of compensation passed by the Commissioner u/s 20 (sic. Section 19) of the Act and the said order is subjected to appeal u/s 30(1) of the Act. But, third proviso to Section 30(1) which was added by Amending Act 15 of 1933 places an embargo on the exercise of right of appeal only on condition of deposit of the amount determined by the Commissioner. In the instant case, a contention was taken that the word "employer" employed in the said third proviso to Section 30(1) of the Act does not include the "insurer". Repelling the said contention, a Division Bench of this Court in Gangireddy Venkateswara Rao Vs. Divisional Manager, New India Assurance Co., Guntur and Others, , held that the "insurer" steps into the shoes of "employer" when he prefers an appeal against the order of the Commissioner directing him to pay the compensation and that the word "employer" attracts even the "insurer". There is no judgment shown taking a contrary view.

2. After scanning through the provisions of the Act and also the decision rendered by the Division Bench referred to above, we are also of the considered view that the word "employer" in the third proviso to Section 30(1) of the Act takes in "insurance company" also. As such, we do not see any legal infirmity in the orders passed by the learned Single Judge in dismissing the appeals for non

payment of amount of compensation determined by the Commissioner u/s 19 of the Act.

3. Mr. V. Tulasi Reddy and Mr. Vijaya Kumar Heroor, the learned Counsel for respondent-claimants and other Counsel appearing for respondent-claimants contend that the annexation of a copy of the certificate issued by the Commissioner as proof of payment of amount of compensation awarded u/s 19 of the Act is a precondition for availing the appeal remedy and, as such, later payment of compensation cannot cure the defect in filing of the appeal. It may be so in ordinary cases. There is no dispute with regard to the "employer". Here is a case where, the insurance companies, which are the appellants herein, are labouring under an impression that they are not the "employers" in the legal sense and they do not come within the meaning of the word "employer" in the third proviso to Section 30(1) of the Act. Exercising power under Article 226 of the Constitution of India, this Court can always cure the defect if such defect is curable. It is similar to that of payment of deficit Court-fee where the Court is enjoined to condone the delay in payment of deficit Court-fee. There are several such instances where the cases/appeals have been entertained without Court-fee or with deficit Court-fee and when ordered, the same was rectified and the cases/appeals were entertained and disposed of on merits, Instances can also be given with reference to Section 11 of A.P. Court-fees and Suits Valuation Act, 1956 where there is property valuation, the deficit Court-fee paid thereon at any stage of the suit or appeal is fit to be rectified. Such instances only show that non-deposit, be it Court-fees or the amounts for availing the appeal remedy like the instant one, are curable by later compliance of the provisions of law and the cases cannot be dismissed on technical grounds for non-compliance at the threshold.

4. It is stated across the Bar by the learned Counsel for appellants that in most of the cases, amounts have already been deposited and only in a few cases that too before the judgment rendered by the Division Bench referred to above, the amounts have not been deposited or there is deficiency in the quantum of deposit. Therefore, we pass a general order to the effect that in such of those cases where the amount of compensation determined by the Commissioner u/s 19 of the Act has been deposited, then such appeals filed before the learned, Single Judge stand restored and they are directed to be disposed of on merits after hearing both the parties. We also grant time of one month from today to deposit the amount in cases where the amounts have not been deposited or partly deposited as required under third proviso to Section 30(1) of the Act and on such deposit, the appeals before the learned Single Judge get restored automatically and be disposed of on merits after hearing either party and the respondent-claimants shall be entitled to withdraw the amount to the extent of 75 per cent without furnishing any security and the balance on furnishing bank guarantee. We make it clear that by this time if any of the claimants have already withdrawn the amounts deposited, they shall retain the said amount without reference to this condition. We also make it clear that in case of default

of deposit of amounts as ordered by this order of ours, the orders of the learned Single Judge shall stand.

5. In the result, all the Letters Patent Appeals are accordingly disposed of. No order as to costs.