

(2001) 02 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No"s. 1481 of 1997, 458 of 1999, 967 of 1999 and 1901 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Kartar Singh
 New India Assurance Co. Ltd. Vs Jasbir Kaur
 New India Assurance Co. Ltd. Vs Paramjit Kaur
 New India Assurance Co. Ltd. Vs Balbir Kaur

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 30(1), 4A(3)

Citation : (2001) 2 ACC 20 : (2001) ACJ 1651

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Mr. R.M. Suri and Mr. Bhrigu Dutt Sharma, for the Appellant; Mr. J.S. Yadav and Mr. Ashit Malik, for the Respondent

Judgement

S.S. Sudhalkar, J.—The common question Of law in these cases is "whether the appeal by the Insurance Company u/s 30 of the Workmen"s Compensation Act is sustainable without depositing of the awarded amount ?"

2. Counsel for the parties have been heard on this preliminary point.

3. Section 30 of the Act provides for appeal to the High Court from the orders of the Commissioner. However, by its third proviso, it bars the appeal without a certificate of the Commissioner to the effect that the memorandum of appeal is accompanied by certificate that the appellant has deposited with him the amount payable under the order appealed against. The relevant provision can be quoted as under :—"Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."

4. The contention of the counsel for the appellant is that they are the insurers and not the employers and therefore, the bar which operates against the

employer to file an appeal without being accompanied by the certificate, does not apply to them.

5. Learned counsel for the appellants has cited the case of S.D. Sharma v, Ramesh Bhakud and another, reported as 1993 A.C.J 3. In the said Judgment, the learned Single Judge of the Orissa High Court held that the appeal is maintainable if filed by the Insurance Company without making the deposit of the amount payable under the order appealed against and the reason, according to the learned Single Judge,, is that the Insurance Company cannot come within the category of persons who are specifically required to satisfy the pre-condition. He has also cited the case of Oriental Insurance Co. Ltd. Vs. Lalita Bai and Others, The learned Single Judge of the Madhya Pradesh High Court, relying on the earlier judgments of the Division Bench, held that the restriction contained in the proviso to Section 30 of the Act for depositing the amount is expressly limited to an appeal filed by the employer and therefore, is not applicable to the appeal filed by the Insurance Company.

6. Learned counsel for the appellants has also cited the case of Oriental Insurance Co. Ltd. v. Vasantha Pitambar and another reported as In that case, the learned Single Judge of Karnataka High Court has observed that when the said appeal was filed, the Division Bench of the Court admitted and stayed the enforcement of the award. This was because the appellant had stated in the appeal memo specifically that no certificate as contemplated by the third proviso to Section 30(1) of the Act was produced as the appeal was not filed by the employer. Learned single judge further went to observe that on reading of Section 30(1) of the Act it is clear that only when the employer files an appeal, the requirement of the Section has to be followed. It has followed the Orissa High Court's view in S.D. Sharma case (supra). It has been further observed that once the appeal is admitted by the Division Bench of the court, it was not open to contend that the appeal was liable to be dismissed for the non-compliance of Section 30(1) of the Act. The learned Judge also referred to the case decided by Madhya Pradesh in the case of National Insurance Co. Ltd. Vs. Sarfuddin and Others, in which it has been held that the Insurance Company is not an employer and the condition of depositing the amount before filing the appeal does not apply.

7. Learned counsel for the appellant has further relied on the case of New India Assurance Co. Ltd. Vs. Manorama Sahu and Another, in which learned Single Judge of the Orissa High Court has held that the Insurance Company is not liable to deposit the amount as pre-condition before filing the appeal.

8. A Division Bench of the Orissa High Court in Koili Bewa and Others Vs. Akshaya Kr. Mishra and Another, has held that appeal filed by the Insurance Company without such a certificate of deposit of the amount is not maintainable. Similar view has been taken by the High Court of Jammu and Kashmir in the case of United India Insurance Co. Ltd. Vs. Ghulam Qadir Dar and Others,

9. Counsel for the appellants have also cited the case of Ved Parkash Garg v. Premi Devi and others, reported as 1997(3) PLR 606. It is a decision of the Supreme Court. Though it is not regarding the proviso to Section 30 of the Act, it has been cited to show that the distinction has been made by the Supreme Court in regard to the penalty amount which has to be paid u/s 4A(3)(b) of the Act. In that case, it has been held that the Insurance Company will be liable to meet the claim for compensation alongwith interest. However, it would not be liable to reimburse the penalty and that would be the liability of the employer alone. The principle laid down in the said judgment is clear. It has been held in the said case that as per the provisions of Section 4A(3)(a) of the Act, the interest at the permissible rate gets added to the principal amount. It has also been held that so far as interest is concerned, it is almost automatic once default on the part of the employer in paying the compensation due, takes place. It has further held that no element of penalty is involved therein. It has been held that liability to pay interest on the principal amount under the said provision remains part and parcel of the statutory liability which is legally liable to be discharged by the insured employer and consequently such imposition of interest on the principal amount will partake the character of the legal liability of the insured employer and thus the principal amount as well as the interest thereon would remain part and parcel of the legal liability. It is, therefore, held that it cannot be said that the Insurance Company, when it is statutorily and even contractually liable to reimburse the employer, the interest would not be a part of the insured liability of the employer. Regarding the penalty, it has been observed that it has to be paid on account of personal fault of the insured not backed up by justifiable cause and, therefore, the Insurance company cannot be made liable to reimburse that part of penalty amount. This distinction made between the penalty and interest will not be helpful to the appellants at all. It does not follow that such a distinction can be made for Insurer filing the appeal, with regard to the depositing of the amount. Therefore, the principle laid down in the said judgment will not be of any help to the petitioner.

10. Counsel for the appellants have relied upon the case of Northern India Insurance Co. Branch Indore v. Commissioner for Workmens Compensation, Indore and others reported as 1973 ACJ 428. It has been held therein that the Insurance Company has a right to file appeal u/s 30 of the Act and even the restriction of depositing of the amount is not, applicable to the Insurance Company.

11. In the case of Ganglreddy Venkateswara Rao and another v. New India Assurance Co, Ltd., Gun-tur and others reported in 1998(2) SCT 613 (P&H) : 1998 L.L.J. 1011 a Division Bench of Andhra Pradesh High Court has held that even if when insurer prefers appeal, it has to be accompanied by Certificate of Commissioner that appellant has deposited amount payable.

12. Counsel for the respondents have cited the case of New India Assurance Co. v. M. Jayarama Naik and another, reported as 1982 ACJ 3. The Division Bench of

Kerala High Court in the said case held that what the insured cannot do himself i.e. filing an appeal without complying with the requirements of the Act cannot be done by another on his behalf and, therefore, the appeal filed by the insurer without depositing the amount cannot be maintainable.

13. It can be found from the above quoted judgments that the different High Courts have taken different views regarding this question. No judgment of Supreme Court or of this Court has been cited before me by any of the parties. It is also to be seen that except Section 30 of the Act, there is no other provision for filing an appeal. Insurance Company can file the appeal only because it steps into the shoes of the Insured i.e. the employer. It cannot, therefore, have better rights than that of employer when there is no statutory provision for the same. If the employer is barred from filing an appeal without filing of the certificate of having deposited the amount, there appears to be no reason to say that the bar is not applicable to the Insurance Company. Of course, the words used in the proviso are that the employer is barred from filing the appeal without the certificate. As mentioned above, when there is no special provision regarding filing of the appeal by the Insurance Company and the Insurance Company files an appeal only because it steps into the shoes of the employer, the bar will be applicable to the Insurance Company also.

14. Therefore, it will not be proper for me to make such a distinction which is not provided for under the Act, expressly or impliedly. Moreover, the Workmen's Compensation Act is a benevolent legislation. Hence even if two views are possible, the one in favour of the claimant workman would prevail.

15. In the view of the above, I do not go to consider the other aspects of the appeals, on the merits of the cases.

16. As a result, I hold that the Insurer filing an appeal against the order of the Commissioner under the Act has to fulfill the pre-condition of depositing the amount as mentioned in the third proviso to Section 30 of the Act. In all these four appeals, the amount has not been deposited. In view of this the appeals are not maintainable and are, therefore, dismissed.

17. Appeal dismissed.