

(2008) 07 BOM CK 0011

In the Bombay High Court

Case No : F.A. No. 290 of 2001 and Civil Application No. 7265 of 2008

New India Assurance Co. Ltd.

APPELLANT

Vs

Nirmalabai Gosavi and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(1), 143

Workmens Compensation Act, 1923 — Section 22, 23, 4, 4A

Citation : (2009) ACJ 1963 : (2008) 5 ALLMR 598 : (2009) 120 FLR 518 :
(2008) 6 MhLj 587

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : V.N. Upadhye, for the Appellant; U.S. Malte and A.M. Gholap, for the Respondent

Judgement

Abhay S. Oka, J.—When the Civil Application No. 7265 of 2008 came up before this Court, considering the controversy involved, the first appeal itself was taken up for final disposal.

2. As the record of the case is called for in this case, the learned Commissioner under the Workmen's Compensation Act, 1923 (hereinafter referred to as the said Act of 1923) is unable to proceed with the claim petition filed by the 1st to 4th respondents u/s 22 of the said Act.

3. The 1st to 4th respondents have filed a claim petition u/s 22 of the said Act of 1923 alleging that the deceased Rajaram suffered an employment injury which turned out to be a fatal injury. The case is that the injury was caused to the deceased Rajaram in an accident arising out of and in the course of his employment. The appellant is the insurer of the 6th respondent herein.

4. The impugned judgment and order has been passed by the learned Commissioner for Workmen's Compensation on an application made by the 1st to 4th respondents invoking Section 140 of the Motor Vehicles Act, 1988

(hereinafter referred to as the said Act of 1988). The claim was purportedly made for grant of compensation of Rs. 50,000/- on account of "no fault liability". By the impugned judgment and order, the learned Commissioner held that the provisions of the said Act of 1988 were not applicable as the deceased has not died in an accident involving a motor vehicle. The learned Commissioner however, held that as the relationship of employer and employee between 6th respondent and deceased Rajaram was not disputed, the appellant - Insurance Company was liable to deposit a sum of Rs. 50,000/-.

5. The submission of the learned Counsel for the appellant is that in a claim petition u/s 22 of the said Act of 1923 the provisions of Section 140 of the said Act of 1988 could not have been invoked and in any event, there was no power vesting with the Commissioner under the said Act of 1923 to give such interim direction.

6. The learned Counsel for the 1st to 4th respondents (original claimants) submitted that if there is a power vesting in the Commissioner to grant compensation in accordance with the Section 4 and Section 4-A of the said Act of 1923, the learned Commissioner in appropriate cases can always grant an order in the nature of interim relief directing deposit of certain amount by way of compensation. He submitted that in the circumstances, no interference is called for with the impugned order.

7. I have carefully considered the submissions. The title of the application made by the 1st to 4th respondents on which the impugned order has been passed indicates that the said respondents purported to invoke "no fault liability". If Section 140 of the said Act of 1988 read with Section 143 thereof is perused, the provisions of Section 140 could have been read in the said Act of 1923 provided a claim for compensation was made under the said Act of 1923 in respect of death or permanent disablement of any person resulting from an accident involving the use of a motor vehicle which is referred to in Sub-section (1) of Section 140 of the said Act of 1988. Going by the case pleaded by the claimants, obviously Sub-section (1) of Section 140 of the said Act of 1988 will have no application in the present case as this is not a case where the accident was a result of use of a motor vehicle owned by the employer of the deceased.

8. Perusal of the said Act of 1923 shows that there is no power conferred on the Commissioner to pass such an interim direction. Moreover, Section 23 of the said Act of 1923 makes it abundantly clear that the Code of Civil Procedure, 1908 will apply only for the purpose of taking evidence on oath, for enforcing attendance of the witnesses and compelling production of documents and material objects. In any event, there is no power vesting in the Commissioner to pass an interim order directing the opponents in a claim petition to pay interim or ad hoc compensation.

9. In the circumstances, the order impugned deserves to be set aside on the ground that the same is illegal.

10. It is pointed out that a sum of Rs. 25,000/- deposited by the appellant has been withdrawn by the 1st to 4th respondents. The main claim petition is still pending before the learned Commissioner. The learned Commissioner will pass an appropriate order regarding refund/adjustment/recovery of the said amount of Rs. 25,000/- at the time of passing final order on the main claim petition.

11. Subject to what is observed above, the impugned judgment and order is quashed and set aside and the application made by the 1st and 4th respondents at Exh.U-2 in Claim Application W.C. No. 4/2000 stands dismissed. The appeal is accordingly allowed partly with no order as to costs.

12. Civil Application No. 7265 of 2008 does not survive and stands disposed of. R and P shall be sent to the learned Commissioner forthwith. Hearing of the claim petition is expedited.