
(1983) 02 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 224 of 1977

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Bismilla Bi and Others

RESPONDENT

Date of Decision : 02-02-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95, 96

Workmens Compensation Act, 1923 — Section 10, 14, 19, 3

Citation : (1986) 59 CompCas 188

Hon'ble Judges : P.D. Mulye, J

Bench : Single Bench

Advocate : M.L. Dhupar, for the Appellant; A. Siddeique and G.K. Neema, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—The appellant, the New India Assurance Company Ltd., has filed this appeal u/s 30 of the Workmen's Compensation Act, 1923, against an award dated September 8, 1977, passed by the Commissioner for Workmen's Compensation, Indore, in W. C. Case No. 29 of 1976 whereby he has awarded compensation of Rs. 19,200 plus costs and interest against the appellant as also respondent No. 4, Abdul Wahid, in whose employment the deceased, Aziz Khan, was working as a truck driver on a monthly salary of Rs. 420 per month and of whom respondents Nos. 1, 2 and 3 are the dependants and legal representatives who had claimed compensation.

2. The facts giving rise to this appeal may be stated, in brief, as under : The deceased, Aziz Khan, was working as a truck driver with respondent No. 4, Abdul Wahid, on a monthly salary of Rs. 420. Respondent No. 1, Bismilla Bi, is the widow and respondent No. 2, Rauf Khan, and respondent No. 3, Yunus Khan, are his sons. On April 13, 1976, the deceased, Aziz Khan, while driving the truck MPM-4315 from Burhanpur to Indore, during his employment, met with an accident on the Bombay-Agra road near Janapav Kuti at about 10 a.m. while

trying to save a bullock cart, in which the truck turned turtle and on account of the said accident, the deceased died. Respondents Nos. 1 to 3 as claimants filed the petition claiming compensation to the tune of Rs. 21,000 against respondent No. 4, Abdul Wahid, as also the appellant, the New India Assurance Co. Ltd., with whom the said truck was insured as per policy, Ex. D. 1, dated March 22, 1976.

3. Respondent No. 4, Abdul Wahid, the principal employer, though served, remained ex parte as he did not file any written statement. However, the appellant contested the claim mainly on the ground that the deceased was not in the employment of respondent No. 4, Abdul Wahid, when the accident took place. They also contended that the petition against the appellant was not maintainable under the provisions of the Workmen's Compensation Act : that respondent No. 4 violated the terms of the policy and did not satisfy the appellant that the deceased was working with him as a truck driver : that the deceased did not have a driving licence and that in case any award is to be passed against the appellant, the compensation could be awarded only to the tune of Rs. 9,000 as per unamended Schedule 4 of the Workmen's Compensation Act, 1923.

4. The learned Commissioner, after recording evidence, found that the deceased was employed on a monthly salary of Rs. 310 only : that the deceased, Aziz Khan, received injury by accident arising out of and in the course of employment resulting in his death on April 13, 1976 : that the employer was informed about the accident in time who had also given intimation about the same to the appellant company and that the deceased had a driving licence and thus gave his award as stated above. Hence, this appeal only by the insurance company. The employer, Abdul Wahid (respondent No. 4), has not filed any appeal against the said award though he has been examined as a witness on behalf of the appellant before the learned Commissioner under the Workmen's Compensation Act.

5. The learned counsel for the appellant contended that no award could be passed against the insurance company under the Workmen's Compensation Act, 1923, as the insurance company does not come within the ambit of the definition " employer " and, therefore, the learned Commissioner had no jurisdiction to pass an award against the insurer unless the case falls within Section 14 of the said Act, which deals with the liability of the insurer when the employer becomes insolvent. He further contended that no interest could be awarded against the appellant u/s 4A of the said Act. Therefore, the principal question argued at length on behalf of the appellant was about the jurisdiction of the learned Commissioner so far as the fastening of the liability, under the said Act, against the appellant is concerned, as, according to the learned counsel, the appellant being not an employer, the learned Commissioner did not acquire any jurisdiction to pass any award against the appellant along with the employer. According to the learned counsel, on the basis of an award passed against the employer, his remedy was to file a civil suit against the appellant. He further contended that the defences available to the appellant under sections 95 and 96 of the Motor

Vehicles Act, 1939, the appellant before the learned Commissioner was deprived of giving that evidence which it could lead while contesting a civil suit passed on such an award.

6. So far as this last point is concerned, I see no force in this contention as the appellant has been given full scope to lead the necessary evidence and, therefore, it cannot be allowed to put this grievance for the first time in this court as it itself has examined respondent No. 4, Abdul Wahid, the employer, as its witness.

7. The learned counsel for the appellant did not press his point that at best the claimants could be awarded only compensation of Rs. 9,000, in view of Act No. 65 of 1976 amending Schedule 4 also, which came into force with effect from October 1, 1975, according to which the claimants are entitled to a compensation of Rs. 19,200 as per that amended Schedule, as the insurance policy, Ex. D. 1, was issued on March 22, 1976, after the said amendment in the Schedule.

8. In support of his submission that no award can be passed against the insurance company by the Commissioner under the Workmen's Compensation Act, 1923, he placed reliance on the decisions in *R.B. Moondra and Co. Vs. Mst. Bhanwari and Another*, *Vanguard Insurance Co. Ltd. v. Bahoti* [1972] ACJ 426 (Delhi), *United India Fire and General Insurance Co. Ltd. v. Joseph Mariam* [1979] ACJ 349 (Ker), *Veerappa Thevar Vs. Kathaswami Chettiar*, *G. Sreedharan v. Hindustan Ideal Insurance Corporation Ltd.* [1976J Lab IC 732 (AP) and *Northern India Insurance Co. v. Commissioner for Workmen's Compensation* [1973] MPLJ 548 : [1973] ACJ 426, and so far as the question of interest is concerned, he placed reliance on the decision in *Rewa Coalfields Ltd. v. Chainoo* [1971] MPLJ 311. He also submitted that in view of the conflicting decisions of the various High Courts on this point and there being no direct decision of this High Court, the case may be referred to a larger Bench.

9. On the other hand, the learned counsel for respondent No. 4 relied on the decisions in *Northern India Motor Owners' Insurance Co. Ltd. v. Magan Shanaji Solanki* [1974] ACJ 55(Guj), *Sital Prasad v. Afsari Begum* [1977] ACJ 486 (All), *Oriental Fire and General Insurance Co. Ltd. v. Gopalakrishna Pillai* [1978] ACJ 473 (Ker) and *Northern India Insurance Co. v. Commissioner for Workmen's Compensation* [1973] MPLJ 548 : [1973] ACJ 426, on which authority also the learned counsel for the appellant had placed reliance on the ground that the observations made therein are obiter dicta as the question of jurisdiction as such was not directly involved in that case.

10. After hearing the learned counsel for the parties and after carefully going through the case-law cited, I am of opinion that the submission made on behalf of the appellant cannot be accepted for reasons stated hereinafter. All these decisions have considered the scope of Section 14 of the Workmen's Compensation Act, 1923, as also Section 95 and Section 96 of the Motor Vehicles Act, 1939. However, with respect, I am unable to subscribe to the view taken in

the single Bench decision of the Rajasthan High Court in *R.B. Moondra and Co. Vs. Mst. Bhanwari and Another*, . So far as the decision in *G. Sreedharan v. Hindustan Ideal Insurance Corporation Ltd.* [1976] Lab IC 732 (AP) is concerned, the facts of that case were different as the question involved therein was about indemnification by the insurance company u/s 12 of the Workmen's Compensation Act, 1923, though this decision has also taken into consideration other sections of the said Act. Similarly, in the decision in *Veerappa Thevar Vs. Kathaswami Chettiar*, the point raised related to the scope of Section 12 of the Workmen's Compensation Act.

11. The Kerala decision in *United India Fire and General Insurance Co. Ltd. v. Joseph Mariam* [1979] ACJ 349, which has taken the view that the Commissioner under the Workmen's Compensation Act, 1923, has no jurisdiction to pass an award against the insurance company which was decided on June 9, 1978, has relied on *New India Assurance Co. Ltd. v. Parameswari Amma* ILR 1976 1 Ker 237. This very decision has also been considered by the Kerala High Court in the decision of *Oriental Fire and General Insurance Co. Ltd. v. Gopalakrishna Pillai* [1978] ACJ 473, decided on August 21, 1978, wherein they have taken the view that the Commissioner has jurisdiction to pass an award against the insurance company, though it also appears from this decision that the earlier decision in *United India Fire and General Insurance Co. Ltd. v. Joseph Mariam* [1979] ACJ 349 has not been referred to therein.

12. On the contrary, the decisions cited on behalf of the respondents referred to above, which have directly dealt with the question raised, have taken the view that the Commissioner under the Workmen's Compensation Act, 1923, has the jurisdiction to pass an award against the insurance company. In the decision of this court in *Northern India Insurance Co. v. Commissioner for Workmen's Compensation* [1973] MPLJ 548 : [1973] ACJ 426, one of the points argued on behalf of the insurance company was that the insurance company could not be made a party to the proceedings under the Workmen's Compensation Act, 1923, and no liability could be fastened upon the company. But this submission has been negated by the Division Bench after considering the provisions of Section 96 of the Motor Vehicles Act, 1939, though it is no doubt true that this was a writ petition filed by the insurance company which was dismissed on the ground that the insurance company had a remedy of appeal under the Workmen's Compensation Act, 1923, to which they had not resorted to. Therefore, I am of opinion that it is not necessary to refer this case to a larger Bench.

13. In the present case, the appellant company had notice of the proceedings before the Commissioner which they defended though not on any of the grounds mentioned in Section 96(2) of the Motor Vehicles Act, 1939. According to the learned counsel, the appellant, though made a party, was only watching the proceedings to find out that there is no collusion between the employer and the claimants to fasten the liability upon the insurance company. But the facts of the present case do not reveal any such thing. On the contrary, they having

examined the insured respondent No. 4 as their own witness, it does not He in the mouth of the insurance company to contend that they were deprived of giving evidence in defence of their case.

14. Before the proviso to Section 95(1)(b) of the Motor Vehicles Act, 1939, was amended by the Motor Vehicles (Amendment) Act, 1956, it was discretionary with the State Governments to lay down that a policy of insurance required u/s 94 of that Act, should also cover liability arising under the Workmen's Compensation Act, 1923. However, after the amendment, it is compulsory. In view of Section 19(2) of the Workmen's Compensation Act, 1923, no civil court is competent to adjudicate upon any matter required by the provisions of that Act to be adjudicated upon by a Commissioner functioning under the Workmen's Compensation Act, 1923, and the liability of a " person " to pay compensation under that Act is no such matter required to be decided by the Commissioner. Therefore, the Commissioner has the exclusive jurisdiction to decide the matter though he has no jurisdiction to decide any other matter so far as third party claim for damages arising out of rash and negligent driving of the vehicle is concerned for which the forum constituted is the Claims Tribunal u/s 110 of the Motor Vehicles Act, 1939, or a civil court.

15. Section 3 of the Workmen's Compensation Act, 1923, deals with the employer's liability of compensation : Section 4 deals with the amount of compensation : Section 10 deals with notice and claim and Section 14 deals with the insolvency of employer, which, in my opinion, is not attracted in the present case in view of the wordings of Section 19, wherein it is provided that if any question arises in any proceedings under this Act as to the liability of " any person " to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner. It further provides that no civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. Therefore, after considering the scheme of the Act as also the interpretation of the relevant sections made by different High Courts referred to above, I am of opinion that the learned Commissioner for Workmen's Compensation has the jurisdiction to consider the question regarding the liability of the insurance company along with that of the employer.

16. As regards interest, the same has also been rightly awarded in accordance with law.

17. As a result of the aforesaid discussion, the appeal fails and is dismissed. However, considering the facts and circumstances of the case, the parties are directed to bear their respective costs of this appeal.