
(2004) 12 AHC CK 0044
In the Allahabad High Court
Case No : F.A.F.O. No. 3376 of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Neeru Dabur and Others

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 10(1), 12, 14, 2, 3

Citation : (2006) ACJ 2393 : (2005) 2 AWC 1936 : (2005) 104 FLR 589

Hon'ble Judges : M.P. Singh, J;A.K. Yog, J

Bench : Division Bench

Advocate : Rahul Sahai, for the Appellant; Bushra Maryam, for the Respondent

Judgement

A.K. Yog, J.—This first appeal from order has been filed u/s 30(1)(a), Workmen's Compensation Act, 1923 (as amended upto date) (for short "Act"). Before presenting this appeal Stamp Reporter of this Court on 6.12.2004 reported "Certificate of deposit has been attached".

2. Miss Sumati Rani Gupta advocate (holding brief of Miss Bushra Maryam advocate--representing the claimant respondent Nos. 1, 2, 3 and 4) raised a preliminary objection to the said report of the Stamp Reporter and submitted that there no appeal lies (i.e., filed) unless it is attached with "...a certificate issued by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against" as required under third proviso to Section 30(1)(a) of the Act and to that extent the report of Stamp Reporter is against record inasmuch as the certificate attached with this F.A.F.O. itself shows that only amount of compensation has been deposited whereas amount of interest under the impugned judgment has not been deposited.

3. We have heard the learned counsel for the parties and perused the record.

4. The appellant has filed a certificate issued by the concerned authority which shows that an amount of Rs. 5,03,707 (i.e., compensation amount Rs. 3,94,120

plus interest Rs. 1,09,587 is due awarding to the said impugned judgment). The certificate also mentions that the appellant/ assurance company has deposited Rs. 3,94,120 only within stipulated time. This certificate also shows that the amount of interest Rs. 1,09,587 under the above award, has not been deposited by the appellant/assurance company.

5. For convenience, we quote Section 30(1) IIIrd proviso of the Act which reads :

"Provided further that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate issued by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."

6. Learned counsel for the appellant agrees that aforequoted proviso is relevant when appeal is filed by an employer as it clearly refers to "appeal by an employer" and placed reliance upon the following judgments :

(1) New India Assurance Co. Ltd. v. Smt. Manorama Sahu and Anr. 1994 (68) IF&LR 1244.

In the aforesaid decision learned single Judge of Orissa High Court took the view that the said proviso contemplates "appeal by an employer" and on that basis held that deposit of certificate under third proviso to Section 30(1) of the Act is relevant only in a case when appeal is preferred by an employer, i.e., no certificate of deposit is required when the appeal u/s 30(1) of the Act is being filed by an Insurance Company.

The relevant extract from the aforesaid judgment is being reproduced below :

"Section 30(1), third proviso, of the Act provides that the employer preferring appeal against his liability u/s 30(1)(a) of the Act is to file the certificate of the Commissioner evidencing deposit of the awarded compensation along with the memorandum of appeal. This being a mandatory pre-condition creating impediment on the right of appeal vested in an employer, there would be no scope for consideration of the question of condonation of delay in presenting the appeal where such certificate does not accompany the memorandum of appeal. The question of condonation of delay can be considered only after the certificate is filed.

Admittedly, the insurer has not deposited the amount and has not filed the certificate of the Commissioner along with the memorandum of appeal. Mr. P. Roy, learned counsel for the appellant, submitted that under the scheme of the Act, the insurer is not the employer and accordingly where the insurer prefers an appeal u/s 30(1) of the Act, the certificate is not required to accompany the memorandum of appeal as required under the third proviso. Mr. Roy relied upon the observation in the decision of this Court in New India Assurance Co. Ltd. v. Sankar Behera, where, considering the question of maintainability of an appeal, it was observed (at page 340 of (1988) ACJ) :

"At this stage it is worth mentioning that the third proviso u/s 30(1) requires the employer to deposit the amount. It does not require the insurer to deposit any amount."

Since the insurer-appellant in that case had deposited the amount, the further discussion on the question was considered to be of academic interest.

In the reported decision, the maintainability of appeal by the insurer was the question to be considered. The appeal being a vested right and in view of the language of Section 30(1) of the Act that any person aggrieved can prefer an appeal, it was observed that the insurer is a person aggrieved since it was made liable to pay the compensation and hence the right of appeal is vested on the insurer. In that context, the scheme of the Act was also considered.

The employer is liable u/s 3 of the Act. A contractor being the principal employer u/s 12 of the Act was also made liable. Although the liability of an insurer is limited u/s 14 of the Act, so far as a workman in a motor vehicle is concerned, the insurer was made liable by judicial precedent in the decisions in *Bibhuti Bhusan Mukherjee v. Dinamani Dei and Oriental Fire and General Insurance Co. Ltd. v. Matias Burla*. When in the Act the terms

"employer", "principal employer" and "insurer" have been used, each term has a separate meaning. The principal employer is also employer u/s 3 of the Act and is to comply with the precondition u/s 30(1), third proviso. The insurer is thus not an employer. He only covers the risk of the employer under a contract. Because of the mandatory provision under the Motor Vehicles Act, he is liable. Thus, the insurer not being an employer, is not required to comply with Section 30(1), third proviso of the Act."

(2) *Oriental Insurance Co. v. Smt. Lalita Bai and Ors.* 1997 (75) FLR 459.

The relevant paragraphs 3 and 4 are being reproduced below :

"3. As objection was raised by the counsel for the respondents for non-compliance of third proviso to Section 30(1) of the Workmen's Compensation Act, 1923, that the memo of appeal is not accompanied by certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order in appeal.

4. The objection cannot be sustained in view of Division Bench decision of this Court in *Northern India Insurance Co., Indore v. Commissioner for Workmen's Compensation*, wherein it has been held that the restriction contained in the proviso for depositing the amount is expressly limited to an appeal filed by the employer. The instant appeal has been preferred by the Insurance Company. Therefore, the third proviso to Section 30 of the Workmen's Compensation Act is not applicable and the appellant is not required to deposit any compensation amount with the

Commissioner for Workmen's Compensation before filing an appeal."

(3) Kap Steel Ltd. Vs. R. Sasikala, .

This decision is not relevant for the present case and does not help the appellant.

It is to be noted that in the case of Kap Steel Ltd. (supra) the question was as to whether certificate of deposit as contemplated under third proviso to Section 30(1) is relevant when appeal is preferred u/s 30(1)(aa) of the Act. In that case Karnataka High Court answered in negative holding that third provision clearly provides for an appeal u/s 30(1)(a) of the Act and the same was not relevant when an appeal is preferred under Clauses (aa), (b), (c), (d) and (e) of Section 30 of the Act.

(4) United India Insurance Company Ltd. Vs. Shaik Alimuddin and Another, . The relevant para of said decision is being reproduced below:

"The appellant has deposited before the Commissioner, the amount of compensation of Rs. 73,132.80 at the time of filing the appeal; but did not deposit the penalty and interest. The contention of the learned counsel for the respondent is that the appellant had not deposited the entire amount as ordered by the Commissioner, as such there is no compliance with the aforesaid proviso to Sub-section (1) of Section 30 of the Act and so the appeal is not maintainable. On the other hand, the learned counsel for the appellant contended that the Insurance Company need not pay the penalty and interest and therefore the amount was not deposited and that there is no force in the contention of the learned counsel for the respondent that the appeal is not maintainable.

Learned counsel for the respondent has also pointed out that Clause (a) to Section 30(1) of the Act deals with an appeal against an order awarding compensation and Clause (aa) deals with an order awarding interest or penalty u/s 4A and therefore contended that if the Insurance Company is aggrieved by an order of the Commissioner awarding interest or penalty u/s 4A and wants to file an appeal against the order under Clause (aa) and that amount has also to be deposited. But the third proviso to Section 30(1) reads 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. Clause (aa) was inserted by the Amending Act 8 of 1959 with effect from 1.6.1959. But in the third proviso there is no amendment with regard to an appeal under Clause (aa) also that the said amount has to be deposited with the Commissioner. Since the third proviso reads that the deposit has to be made of the compensation awarded under Clause (a) when an appeal is filed, I am unable to agree with the contention of the learned counsel for the respondent that the Insurance Company has to deposit the penalty and interest also which is awarded under Clause (aa). I agree with the view expressed by the Division Bench in Kap Steel Ltd. (supra), and hold that the Insurance Company is not liable to deposit the penalty and interest also at the time of the filing the appeal. I therefore, overrule the objection of the learned counsel for the respondent that

the appeal is not maintainable for non-compliance of the third proviso to Section 30(1) of the Act."

7. In the case of United India Insurance Co. Ltd. (supra) the question before the Court as to whether the interest awarded u/s 4A of the Act, when there is some admitted liability, is liable to be paid by the Insurance Company. Against an order u/s 4A of the Act, appeal is provided u/s 30(a), (aa) of the Act. But in a case where employer admits no liability to pay compensation and claim petition is being filed u/s 10(1) of the Act, appeal lies u/s 30(1)(a) of the Act. There is, therefore, no doubt that proceedings under Sections 4A and 10(1) of the Act are entirely distinct proceedings and deal with different situations.

8. Learned counsel for the appellant then referred to Section 2(e) of the Act which defines the expression "employer" and pointed out that this does not include Insurance Company.

9. On the other hand Miss Sumati Rani Gupta, advocate appearing on behalf of claimant respondents submits that third proviso, attached to Section 30(1)(a) of the Act, is clear in language and there is no ambiguity to the extent that when an appeal is being filed by an employer it must be accompanied by a certificate of Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. It is further argued that appellant which is Insurance Company in this case, has itself filed certificate. According to the learned counsel this shows that appellant in this case has, it is clear in the facts of this case, understood and interpreted IIIrd proviso in question to mean that certificate of deposit even when appeal is filed by Insurance Company.

10. Learned counsel for the claimant respondent has further argued that the expression "employer" used in the third proviso itself requires to be interpreted by this Court and should be read to mean "employer" or any other person who is liable to pay on behalf of the employer in order to safeguard the provision and in satisfaction of legislative intent incorporating the provision in question, i.e., to safeguard the amount of compensation for the workman or his dependents.

11. In support of her contention, learned counsel for claimant respondent has placed reliance upon following decision:

(1) New India Assurance Co. v. M. Jayarama Naik and Anr. 1982 Lab IC 1235 (Ker-HC).

(2) United India Insurance Co. Ltd. v. Kashimsab and Ors. 1993 Lab IC 2241 (Kar-HC). The relevant paras 17, 18 and 20 of the said decision are being reproduced below :

"17. As far back as in the year 1946, a Division Bench of the Bombay High Court had the occasion to deal with this question. Considering the very question arising under the third proviso to Section 30(1) of the Act with reference to the scope and object of the Act 15 of 1933 by which the third proviso came to be inserted, the Division Bench held :

"The deposit as well as the certificate evidencing the deposit is a condition precedent. This condition seems to be incorporated to give relief to dependants of persons who are in humble station of life and the compensation should be quickly available to supply their needs." (Please see AIR 1946 Bom 112. The same view was taken by the Calcutta High Court in B.P. Nandy Vs. General Manager, East India Rly. and Another, ."

18. Apart from construing the provisions of Section 30 of the Act, they were called upon to decide the difference between Clause (a) and Clause (d) of Sub-section (1) of Section 30 of the Act. While doing so, their lordships have held in paragraph 12 as follows :

"Thus, where the appeal, while it may be an appeal against the order allowing the claim of indemnity against the appellant, is not such an appeal alone, but is also an appeal against the basic order awarding compensation to the workman then it is not an appeal such as is contemplated by Clause (d), but is in truth and substance an appeal under Clause (a), for which reason the third proviso to Section 30(1) must apply."

Therefore, considering the third proviso to Section 30(1) with reference to an appeal either under Clause (a) or Clause (d) of Section 30(1), their lordships have taken the view that in both cases a deposit as contemplated in the third proviso is necessary to maintain an appeal. This again supports our view.

20. Referring to the construction of the word "employer" as found in the third proviso, we are of the view that we must construct the said proviso such as to give effect to the scope and object of the Act. In other words, we must construct that proviso with a view to advancing cause of justice and not to defeat it. The Supreme Court in a recent decision in A.A. Haja Muniuddian Vs. Indian Railways, , has held in paragraph 5 as follows :

"A view which advances cause of justice must be preferred to the one which defeats it. When an indigent person approaches the Tribunal for compensation for the wrong done to him, the Tribunal cannot refuse to exercise jurisdiction merely because he does not have the means to pay the fee. The ends of justice require that the Tribunal should follow the procedure laid down in Order XXXIII of the Code to do justice."

Thus, following the ruling of the Supreme Court in the above case, to construct the proviso 3 to Section 30(1) of the Act, we should not confine to the literal meaning of the Act, but, on the other hand, we must hold, having regard to the object of the proviso and the fact that the insurer could be adjudged as if a judgment debtor under the decree, that in a case where an appeal is filed by the insurer challenging the judgment and award of compensation in favour of the workman, if cannot be entertained unless it 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, or otherwise, the very object of the proviso would be defeated. In the instant case, since the insurer has not

filed the certificate along with the appeal for having deposited the compensation amount awarded by the Commissioner, the appeal is not maintainable. It is not possible to accede to the contention of Sri Mahesh that the Parliament intended to exempt the insurer from complying with the requirement of the third proviso to Section 30(1) of the Act."

12. The decisions relied upon by the learned counsel for the claimant-respondents clearly supports her contention and we are in agreement with the view taken by the Kerala and Karnataka High Court.

We may at the outset, reproduce Section 2(e) of the Act which reads :

"2 (e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him." (italicised to lay emphasis)

13. At the outset we note that the definition itself clearly indicates that it is inclusive and not exhaustive and therefore, Insurance Company files an appeal (instead of "employer" who has principal liability), it must comply with IIIrd proviso in question.

14. Considering that the definition of "employer" u/s 2(e) of the Act is inclusive, it is also clear that the appeal u/s 30(1)(a) of the Act is generally by an employer but when it is filed by an "insurance company" it is for the reason that insurance company merges its personality with the employer and in that view of the matter the insurance company cannot be exonerated from attaching certificate as contemplated under third proviso to Section 30(1) of the Act.

15. As per the language of the aforequoted IIIrd proviso, this appeal is not maintainable and no appeal in the eye of law unless entire amount due under the impugned award (i.e., compensation + interest + cost, if any) rendered by the authority under the Act is required to be deposited and a certificate to that effect is required to be attached mandatorily with the memorandum of appeal u/s 30(1) (a) of the Act.

16. The authority, therefore, while exercising jurisdiction under Workmen's Compensation Act, is required before issuing a certificate to categorically verify that "entire amount" under an award of compensation under the Act has been deposited.

17. Workmen Commissioner is hence required to furnish a certificate clearly mentioning that entire amount under the compensation award has been deposited or not.

18. Learned counsel for the appellant seeks time to file fresh certificate to show that the balance amount of interest, which has not so far been deposited, has

been deposited. Only to do so the case is passed over. List on December 21, 2004, showing the name of the learned counsels for the parties.