

(2003) 04 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 477 of 2002

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Savita Sen and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(1)

Citation : (2004) ACJ 2134 : (2004) 102 FLR 927 : (2004) 2 JLJ 214 : (2004) 3 LLJ 250 : (2004) 3 MPHT 7 : (2004) 2 MPLJ 445

Hon'ble Judges : Bhawani Singh, C.J.;S.L. Jain, J;Rajeev Gupta, J

Bench : Full Bench

Advocate : N.S. Ruprah, Rakesh Jain and Anoop Nair, Narendra Chouhan, for Claimnants, Rajendra Tiwari and A.G. Dhande, P.D. Gupta, Dy. A.G. and Naman Nagrath, Amicus Curiae, for the Appellant;

Judgement

Rajeev Gupta, J.

These matters have been placed before us on a Reference by a Division Bench of this Court for decision on the following question of law :--

"Whether the third proviso to Section 30(1), of the Workmen's Compensation Act, 1923, requiring the employer to accompany certificate of deposit from the Commissioner for workmen's Compensation of the amount of compensation alongwith the memorandum of appeal is applicable to the appeal filed by the Insurer also ?"

These appeals were filed by the Insurer u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"), against the award passed by the Commissioner for Workmen's Compensation. A preliminary objection has been raised on behalf of the respondent that the appeals filed by the Insurer are not competent, as the memorandum of appeal is not accompanied by a certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. The learned Counsel for the

appellant relying on Division Bench decision of this Court, in Northern India Insurance Co., Branch Indore v. Commissioner for Workmen's Compensation, Indore and Ors. 1973 ACJ 428, contended that the requirement of filing of certificate of deposit of compensation under third proviso to Sub-section (1) of Section 30, of the Act, is applicable to an appeal filed by the employer, and as the appellant insurer is not the employer there is no legal requirement for the appellant to either deposit the amount of compensation or to file a certificate of deposit of compensation alongwith the memorandum of appeal.

Before advertng to the rival contentions of the learned Counsel for the parties, it would be useful to reproduce Section 30 of the Act, which reads as follows :--

"30. Appeals.-- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely :--

(a) an order awarding as compensation a lump-sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump-sum;

(aa) an order awarding interest or penalty u/s 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties :

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.

(2) The period of limitation for an appeal under this Section shall be sixty days.

(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963), shall be applicable to appeals under this Section."

The entire controversy in these matters centers around the third proviso to Section 30(1) of the Act, which mandates the filing of a certificate of deposit of the amount of compensation along with the memorandum of appeal at the behest of the employer. The question posed before us is whether the word "employer" used in the third proviso is to be given literal meaning confining its applicability to the appeal filed at the behest of the employer only, or a wider and liberal interpretation is to be given to the word to include the insurer also keeping in view the purpose sought to be achieved by adding third proviso in the year 1933.

The General Rule of interpretation of statute is that the words and the language used by the Legislature are to be given their ordinary and natural meaning. The Apex Court said in Directorate of Enforcement Vs. Deepak Mahajan and another, :

"32. True, normally Courts should be slow to pronounce the Legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane....."

Workmen's Compensation Act is a beneficial piece of legislation in the field of Labour Laws enacted with a view to protect the interest of the workmen and to provide expeditious final settlement of their disputes. This becomes apparent from the following paragraphs, from the statement of objects and reasons of the Act :--

"The general principles of Workmen's Compensation command almost universal acceptance and India is now nearly alone amongst civilized countries being without legislation embodying these principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to the workmen, alongwith the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

*** **

A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Bill, in the definitions adopted, the scales selected, and the exceptions permitted, the great aim has been precision, in order that in as few cases as possible should the validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, on unanimous recommendation of the committee, provision has been made for special Tribunals to deal cheaply and expeditiously with any disputes that may arise, and generally

to assist the parties in a manner which is not possible for the ordinary Civil Courts."

The Apex Court, while laying down guidelines for interpretation of the provisions of a beneficial legislation, in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, observed :--

"(1) Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law can not be done....."

(5) Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on its sensitized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to the meaning of all legislations....."

(9) To be literal in meaning is to see the skin and miss the soul of the Regulation. The judicial key to construction is the composite perception of the deha and dehi of the provision....."

The Apex Court while interpreting the provisions of *Employees' State Insurance Act*, in *Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another*, observed in Para 24 that :--

"Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment....."

Thus, the provisions of a beneficial legislation are to be interpreted in a manner which helps in achieving the object sought to be achieved by the Legislature by enacting the said law and also advances the cause of justice.

In the above backdrop we now propose to consider the rival submissions of the learned Counsel for the parties.

M/s. Rajendra Tiwari, A.G. Dhande, Senior Advocates, Shri P.D. Gupta, Deputy Advocate General and Shri Naman Nagrath, Advocate appearing as "amicus curiae", and Shri Narendra Chouhan, the learned Counsel for the claimants, contended that the term "employer" used in the third proviso to Section 30(1) of the Act, is to be interpreted to mean and include the employer or any other person challenging the award on his behalf or for protecting his interest. It was further submitted that Section 30 does not expressly provide for an appeal by

the Insurer and such an appeal against the award is filed by the Insurer as he steps into the shoes of the employer on account of a contract of Insurance between them as such the Insurer can not escape from the liability of filing certificate of deposit of the amount of compensation along with the memorandum of appeal, as is mandated in the third proviso to Section 30, in the case of an appeal at the behest of the employer. The learned Counsel further submitted that any other interpretation of the word "employer" used in third proviso is bound to frustrate the very object sought to be achieved by the Legislature.

M/s. M.S. Ruprah, Rakesh Jain and Anoop Nair, the learned Counsel, appearing for the appellants, on the other hand contended that the Courts while interpreting a provision of law should as far as possible give natural meaning to the words used by the Legislature and in no case it is permissible for the Court to add word in its anxiety to achieve the supposed object sought to be achieved by enacting the said law.

Workmen's Compensation Act is a beneficial Legislation, whereby interest of the workmen is sought to be protected. The object of adding third proviso, to Sub-section (1) of Section 30, is to ensure the compliance of the award passed by the Commissioner for Workmen's Compensation in the event of dismissal of the appeal filed by the employer, so that the workmen is not required to run from pillar to post for getting the amount of compensation for years together. This becomes further apparent from the fact that the right of appeal u/s 30 is restricted by providing that an appeal u/s 30 would lie only on a substantial question of law. The literal interpretation of the term "employer" as suggested by the learned Counsel for the appellants is bound to lead to an anomalous situation, where though the employer is required to deposit the amount of compensation before filing an appeal against the award and file certificate of deposit alongwith memorandum of appeal, but the Insurer, if chooses to file an appeal against the same award becoming liable to pay the compensation on account of a contract of insurance between the employer and the Insurer, can file appeal without depositing the amount of compensation and without certificate of deposit. This could never be the intention of the Legislature while adding third proviso to Section 30(1), of the Act.

The matter needs to be examined from yet another angle. Section 30, of the Act, does not give any independent right of appeal to the Insurer. Virtually the right of appeal given to the employer is availed by the Insurer, who feels aggrieved by the award on account of the contract of Insurance between the insurer and the employer. How then the Insurer can be on a better footing than the employer ? It goes without saying that the said right can be availed by the Insurer under those restrictions only which are imposed on the employer.

Before dilating further on the issue, we deem it useful to refer to the decisions cited before us on this subject. These decisions can be broadly classified under two heads namely, giving literal interpretation to the word "employer" used in

third proviso to Section 30 of the Act, and holding that since the Insurer is not employer of the workmen concerned, it is under no obligation to file a certificate of deposit of the amount of compensation alongwith the memorandum of appeal; and the other set of decisions, giving liberal and wider interpretation to the term "employer", and holding that since the Insurer steps into the shoes of the employer it is incumbent upon it to file a certificate of deposit of the amount of compensation alongwith the memorandum of appeal.

In Northern India Insurance Co., Branch Indore v. Commissioner for Workmen's Compensation, Indore and Ors. (supra), Division Bench of this Court in a writ petition by the Insurance Company against the award held that the Insurance Company was a proper party and could file an appeal u/s 30, of the Act, against the award. It was in this context that following observations were made in Para 5 :

"5..... The restriction contained in the proviso for depositing the amount is expressly limited to an appeal filed by the employer. Since the Insurance Company is not the employer, even that restriction is not applicable to the Insurance Company."

The above decision was later followed by Single Judges of this Court in National Insurance Co. Ltd. Vs. Sarfuddin and Others, and Oriental Insurance Co. Ltd. Vs. Lalita Bai and Others, .

However, contrary view has been taken, in New India Assurance v. Mohinder Singh and Anr. 1986 ACJ 1101), wherein Single Judge of this Court followed Division Bench decision of Kerala High Court in New India Assurance Co. v. M. Jayarama Naik and Anr. 1982 ACJ 3, and held that third proviso is applicable to the appeal filed at the behest of the Insurance Company also, and Insurer's appeal filed without certificate of deposit was not maintainable.

Division Bench of Kerala High Court in New India Assurance Co. v. M. Jayarama Naik and Anr. (supra), took the view that third proviso of Section 30(1), of the Act, would be applicable to the appeal filed by the Insurer also. In Para 7, the Court said :

"7. But then the insurer is only stepping into the shoes of the insured, the employer, and the defence is not qua insurer but in the name of the insured and in his place. An appeal preferred on such grounds, if successful, will jeopardise the employee's right to recover the compensation from the employer also. What the insurer seeks in such an appeal is that the insured may be found to be not liable to pay the compensation and consequently, the insurer also may be held to be not liable. The primary relief sought for is the first mentioned relief and the other relief is consequent to the grant of that relief. Hence, such an appeal is preferred by the insurer for and on behalf of the employer and in his stead, though the aim of the insurer is to exonerate his own liability. What the insured can not do by himself, viz., filing of an appeal without complying with the requirements of the third proviso to Section 30, of the Act, can not be done by

another on his behalf. So the third proviso to Section 30 of the Act governs such appeals."

Similar view has been taken by a Division Bench of Karnataka High Court, in *United India Insurance Co. Ltd. Vs. Kashimsab and others*, , wherein it is held in Para 20 that :--

"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 *AA.. Haja Muniuddin v. Indian Railways* 1993 ACT 235 , has held in Para 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 can not 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 33, 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, it can not 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 of having deposited the compensation amount awarded by the Commissioner, the appeal is not maintainable. It is not possible to accede to the contention of Mr. O. 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."

Division Bench of Patna High Court has also decided the question in line with the views of the Kerala and Karnataka High Courts, in *Oriental Insurance Co. Ltd. Vs. Renu Devi and Others*, holding that third proviso to Section 30(1), of the Act, would equally apply to the appeal filed at the behest of the Insurer and an appeal filed by the Insurance Company without a certificate of the Commissioner to the effect that it had deposited with him the amount payable under the order appealed against was not maintainable.

Division Bench of Andhra Pradesh High Court also considered this question in *Gangireddy Venkateswara Rao and Anr. v. Divisional Manager, New India Assurance Co. Ltd. and Ors.* 1999 (1) ACJ 262, and said in Para 7 that :--

"7. It is, therefore, obvious that the insurer steps into the place of the employer when he prefers an appeal against the order of the Commissioner directing him to pay the compensation. He would be preferring it as employer because he steps into the shoes of the employer and consequently the insurer is attracted by the 3rd proviso to Section 30(1), of the Act. The language of that proviso is a wee bit confusing because at one place the expression "employer" is used and at another place "appellant" is used - it begins by saying "provided further that no appeal by an employer under Clause (a) shall lie....." and it ends saying "..... a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against". It is well settled that the liability of the insurer is co-extensive and co-terminus with that of the insured, i.e., the employer herein and the insurer can not question the order awarding compensation by raising grounds which are not open to the employer so far as the quantum of compensation is concerned. The question whether the insurer can question the quantum of compensation awarded to a workman by preferring an appeal is another one - which we are not answering in these cases. Considering that the intendment in requiring the entire amount payable under the order appealed against to be deposited is to see that the fruits of the order are not denied or delayed and are assured and considering the fact that the Act itself is a beneficial legislation, we are of the view that the insurer can not be placed in a different position than that of the insured, i.e., the employer, in matters like this. We are, therefore, inclined to take the view that "an employer" and "the appellant" are used interchangeably for the purposes of the 3rd proviso. This is not doing violence to the language of the 3rd proviso; on the other hand, it is ironing the ruck created by the dual expressions used, i.e., "employer" at one place and "appellant" at another, by a process of interpretation to further the object and intendment of the legislature in enacting the 3rd proviso in accordance with the well established principles of interpretation. We are supported in this view by the Division Bench decision of the High Courts of Mysore, Karnataka, Kerala and Orissa."

Single Judge of Orissa High Court, in *National Insurance Co. Ltd. v. Narendra Samal and Anr.* 1993 (2) ACT 1095, followed decision of the Division Bench of Kerala High Court, and held that since the Insurer steps into the shoes of the employer, third proviso to Section 30(1) is applicable to the appeal at the behest of the Insurance; Company. In this context, it is observed in Para 7 that :--

"7. Reading Section 30, particularly its third proviso, the principle appears to be that if the appeal be such that by it the workman's right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal, if, on the other hand, the workman's right to the compensation awarded does not come into question in the appeal at all, there is no risk to the workman's getting the compensation awarded to him and there is thus no necessity for requiring anyone preferring such an appeal to deposit the compensation amount. Tested in

the light of the said principle, there can be no scope for doubt that the present appeal which concededly comes within Section 30(1)(a) put the right of the workman to receive the compensation ordered by the Commissioner in jeopardy. It is, therefore, my considered view that the third proviso to Section 30 is applicable to such an appeal and if the provision therein is not satisfied the memorandum of appeal can not be said to have been properly presented and the appeal can not be said to have duly instituted."

In *New India Assurance Co. Ltd. Vs. Kartar Singh*, Single Judge of the Punjab and Haryana High Court, while considering this question, observed in Para 13 that :--

"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 Apex 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 can not, 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."

Contrary view has been taken by a Single Judge of Orissa High Court, in *New India Assurance Co. Ltd. v. Manorama Sahu and Anr.* 1993 (2) ACJ 930, wherein it has been held in Paras 6 to 8 that :--

"6. 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 liability of an insurer is limited u/s 14 of the Act, so far as workman in a motor vehicle is concerned, insurer was made liable by judicial precedent in the decisions reported in *Bibhuti Bhusan Mukherjee v. Dinamani Dei* 1982 ACJ 338 and *Oriental Fire & Gent. Ins. Co. Ltd. v. Matias Burla* 1986 ACJ 732 . When in the Act the terms "employer", "principal employer" and "insurer" have been used, each term has a separate meaning. Principal employer is also employer u/s 3 of the Act and is to comply with the pre-condition u/s 30(1) third proviso. 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, insurer not being an employer is not required to comply with Section 30(1) third proviso of the Act.

This question can be viewed from another angle. Right of appeal is a vested right. Where an impediment is intended to be created in respect of such vested right, legislature is required to express the same expressly. Unless there is

express language or clear intendment of the legislature, Courts do not favour impediment being created to arrest exercise of a vested right of appeal. Procedural change is considered in a different light. Hence, an interpretation of third proviso that insurer would come within the meaning of employer would defeat the vested right on any person aggrieved to prefer an appeal and would create impediment which is to be avoided.

Mr. Satpathy, learned Counsel for the claimant, submitted that deposit being intended to protect interest of the workman, the term "employer" in the third proviso to Section 30(1) of the Act should be interpreted to include the insurer. If this interpretation is accepted, an impediment would be created in vested right of any person aggrieved who is not an employer. Accordingly, following the decision reported in *New India Assurance Co. Ltd. v. Sankar Behera* 1988 ACJ 337, I am inclined to hold that the Insurer is not required to deposit the awarded compensation and obtain the certificate to accompany the memorandum of appeal. Appeal without such certificate is competent."

From the decisions referred to above, we gather that High Courts have taken divergent views on this question. However, majority of the High Courts namely :-- Kerala, Karnataka, Patna, Andhra Pradesh, Punjab and Haryana and Orissa have preferred a liberal and wider interpretation to the term "employer" in the third proviso to Section 30(1), of the Act, and have held that as the Insurer gets the right to file an appeal against the award by stepping into the shoes of the employer on account of contract of insurance between them, the restrictions imposed by third proviso on the appeal at the behest of the employer would equally apply to the appeal filed by the Insurer meaning thereby, the appeal at the instance of the Insurer will also have to accompany a certificate from Commissioner for Workmen's Compensation that the amount of compensation has been deposited and in the absence of such a certificate the appeal would not be maintainable.

The contrary view has been taken by Division Bench of this Court subsequently followed by Single Judges of this Court and Orissa High Court, holding that the pre-condition of filing of certificate of deposit under third proviso of Section 30(1) of the Act would apply to the appeal filed by the employer only and as the Insurer is not an employer of the concerned workman, it is under no obligation to file certificate of deposit along with the memorandum of appeal.

The view of majority of the High Courts holding third proviso of Section 30(1), of the Act, applicable to the appeal filed by the Insurer is founded on the grounds that Workmen's Compensation Act, 1923 is a beneficial Legislation; the object of adding third proviso to Section 30(1) of the Act, is to ensure compliance of the award without any procedural delay and inconvenience; Insurer does not have independent right of appeal against the award of compensation in favour of the workmen; the Insurer steps into the shoes of the employer; the Insurer avails the right of appeal given to the employer on account of contract of insurance between them; what can not be done directly by the employer can not be

permitted to be done indirectly through the Insurer; and, the appeal filed by the Insurer by availing the right given to the employer has to be subject to the same restrictions which are imposed on the employer's appeal.

The contrary view holding third proviso of Section 30(1), of the Act, inapplicable to the appeal filed at the behest of the insurer is mainly founded on the analogy that Insurer is not the employer of the concerned workmen; nothing prevented the Legislature from using the words "Employer and Insurer" in place of existing word "Employer" in third proviso to Section 30(1) of the Act; and, the Courts should not interpret a provision relating to right of appeal to create an impediment which was never intended by the Legislature.

At the cost of repetition, we would like to mention that Workmen's Compensation Act, 1923 is a beneficial legislation in the field of Labour Laws. Though, general rule of interpretation of a statute is that ordinary and natural meaning has to be given to the words and language used by the Legislature, but while interpreting a provision of beneficial legislation, the Courts are duty bound to interpret the provisions in such a manner that it not only advances the cause of justice but also helps in achieving the object sought to be achieved by the Legislature in enacting the said Law. In the above backdrop and considering the object sought to be achieved by the Legislature in adding third proviso to Section 30(1) of the Act, to ensure the compliance of the award and disbursement of amount of compensation to the workmen without any procedural inconvenience and delay, we are in complete agreement with the view taken by Kerala, Karnataka, Andhra Pradesh, Patna, Punjab and Haryana and Orissa High Courts holding that the third proviso of Section 30(1) of the Act, is applicable to the appeal filed by the Insurer also.

The contrary view holding the third proviso of Section 30(1) of the Act, inapplicable to the appeal at the behest of the Insurer is bound to defeat the intent and purpose of the Act itself. The Apex Court sounding a note of caution, in *P. Nirathilingam v. Annaya Nadar and Ors.* JT 2001 (9) SC 344, observed in Para 20 that :--

"20. The principle is well settled that an interpretation of the statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided....."

For the foregoing reasons, we are unable to persuade ourselves to agree with the contrary view taken by Division Bench of this Court, in *Northern India Assurance Co. Ltd. v. Commissioner for Workmen Compensation, Indore* (supra) and followed in *National Insurance Co. v. Saifuddin* and *Oriental Insurance Co. Ltd. v. Lalita Bai and Ors.* (supra). These decisions, therefore, are overruled.

Consequently, our answer to the question referred to us is that the third proviso to Section 30(1), of the Workmen's Compensation Act, 1923 requiring the employer to accompany certificate of deposit from the Commissioner for Workmen's Compensation of the amount of compensation alongwith the

memorandum of appeal is equally applicable to the appeal filed by the Insurer, and the appeal at the behest of the Insurer without such a certificate would not be maintainable.

During the course of hearing, the appellants' Counsel submitted that if third proviso is held applicable to the Insurer's appeal also, the appellants, may be granted reasonable time for filing the certificate of deposit. Appellants may advance such a prayer before the Bench hearing the matter hereafter.

Before parting with the case, we place on record our appreciation for the valuable assistance rendered by Senior Counsel Shri Rajendra Tiwari and Shri A.G. Dhande; Shri P.D. Gupta, Deputy Advocate General and Shri Naman Nagrath, Advocate, who appeared as "amicus curiae", in the case.

The Reference thus stands answered. Let these matters now be placed before an appropriate Division Bench, for disposal in accordance with law.