

(1997) 11 OHC CK 0015
In the Orissa High Court
Case No : M.A. No. 564 of 1997

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Lalita Samal and Others		RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Motor Vehicles Act, 1988 — Section 140, 143

Citation : (1999) ACJ 1447

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Misra, J.

1.The insurance company has filed this appeal u/s 30 of the Workmen's Compensation Act, challenging the legality of the order dated 28.5.1997 passed by the Joint Labour Commissioner-cum-Commissioner for Workmen's Compensation, Bhubaneswar, in W.C. Case No. 91-J of 1996, where-under the Commissioner directed payment of Rs. 50,000 to the claimants u/s 140 of the Motor Vehicles Act, 1988, as interim compensation.

2. As the claimants-respondents have entered appearance at the stage of admission, their counsel has also been heard on the question of admission.

3. The learned Counsel for the appellant initially contended that when the case has been filed before the Workmen's Compensation Commissioner, no interim compensation can be paid to the claimants u/s 140 of the Motor Vehicles Act. However, it has been pointed out by the counsel for the claimants-respondents that Section 143 of the Motor Vehicles Act makes it clear that the provisions of Section 140 are also applicable to claim applications filed under the Workmen's Compensation Act, 1923, in cases arising out of accidents of the nature referred to in Section 140(1). In other words, provisions of Section 143 read with Section

140 make it clear that power of granting interim compensation to claimants is also available to the Workmen's Compensation Commissioner in cases of accidents arising out of use of motor vehicle as contemplated in the Motor Vehicles Act. Similar view has been expressed by the Rajasthan High Court in the decision in Gopali (Smt.) Vs. Bhagchand and Another, . As a matter of fact, the Commissioner has referred to such decision of the Rajasthan High Court. In the face of the provisions contained in Section 143, it is fallacious on the part of the appellant to contend that the Workmen's Compensation Commissioner does not have any jurisdiction to grant interim compensation in claim cases before him, where such cases arise out of accidents involving use of motor vehicle, as contemplated in Section 140(1) of the Motor Vehicles Act.

4. The learned Counsel for the appellant also contended that the insurance company in its written statement had denied that the vehicle had been insured with the insurance company and in the absence of detailed inquiry, the Workmen's Compensation Commissioner should not have saddled the liability regarding the payment of interim compensation on the insurance company.

The provisions and procedure contemplated in Section 140 of the Motor Vehicles Act, 1988, are intended as interim measures and if a detailed inquiry would be insisted upon at that stage, the very purpose of Section 140 would be lost. It has been observed by the Supreme Court in the decision in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , the Claims Tribunal is not required to hold a regular trial in the same manner as for finally adjudicating a claim application under the Act while considering the question of awarding compensation u/s 92-A of the Motor Vehicles Act, 1939, which corresponds to Section 140 of the Motor Vehicles Act, 1988. As has been observed in the aforesaid Supreme Court decision while considering the question of "no fault liability" the Tribunal is to satisfy itself in respect of the following matters:

- (i) an accident has arisen out of the use of a motor vehicle;
- (ii) the said accident has resulted in permanent disablement or death of the person concerned; and
- (iii) the claim is made against the owner and insurer of the vehicle in question.

The Tribunal is required to find out prima facie about such aspects by following summary procedure and at that stage the Tribunal is not required to hold a regular trial with a view to coming to conclusive findings. Since u/s 143 of the Motor Vehicles Act, similar power has been conferred on the Workmen's Compensation Commissioner, it is axiomatic that the Commissioner should follow similar procedure.

5. In the present case, the Commissioner has held that the truck which caused the accident was insured with the insurance company. Such finding of the Commissioner does not appear to have been specifically challenged in the memorandum of appeal. It has been merely contended in the memorandum of

appeal that an interim award is not tenable in law without holding any inquiry. As is well-known, an appeal u/s 30 of the Workmen's Compensation Act is confined to substantial questions of law. It cannot be said that there is any substantial question of law involved in the matter relating to the finding rendered by the Commissioner to the effect that the vehicle had been insured with the insurance company. In such view of the matter, there is nothing to interfere with the order passed by the Commissioner directing the present appellant to pay the interim compensation to the claimants. It is, however, made clear that since such interim compensation is given only after summary inquiry and is by way of an interim order, such conclusion will not stand in the way of the appellant from establishing on merit the allegation that the vehicle in question had not been insured with the insurance company. As the order of compensation u/s 140 is an interim measure, the prima facie findings recorded by the Commissioner cannot be held to be final for the purpose of final decision in the case and if it is ultimately held that there was no valid insurance, necessary direction should be issued permitting the insurance company to recover this interim award from the owner or the claimants, as the case may be.

6. For the aforesaid reasons, I do not find any merit in the appeal, which is accordingly dismissed at the stage of admission. Since the appeal has been filed on untenable grounds against an interim direction regarding payment, the appellant is directed to pay cost of Rs. 250 to the claimants-respondents.