

(2002) 03 KAR CK 0040

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 4194 of 1997 and 3145 of 1999

The Oriental Insurance Company Limited, Bangalore

APPELLANT

Vs

B. Singari Gowda and Another

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149 (2), 167, 173
Workmens Compensation Act, 1923 — Section 30

Citation : (2002) 2 ACC 738 : (2002) ACJ 1873 : (2002) ILR (Kar) 1955 :
(2002) 3 KarLJ 356 : (2002) 2 KCCR 876

Hon'ble Judges : Tirath Singh Thakur, J;K. Sreedhar Rao, J

Bench : Division Bench

Advocate : S.P. Shankar and M. Sowri Raju, for the Appellant; K.M. Nataraj and S.M. Lathur, for the Respondent

Judgement

1. These two miscellaneous appeals are before us pursuant to a reference made by a Single Bench of this Court. The appeals arise out of orders passed by the Commissioner under the Workmen's Compensation Act, 1923 awarding compensation to the claimants for injuries sustained by them in two separate motor accidents. The Commissioner, it appears, has determined the compensation on the basis of the provisions of Workmen's Compensation Act, 1923 as amended by Act 30 of 1995 no matter the accidents in question had taken place earlier to the commencement of the amending Act. The insurance Company has assailed the said orders inter alia contending that the very basis on which the amounts have been determined by the Commissioner was erroneous, in view of the decision of the Supreme Court in Kerala State Electricity Board and Another Vs. Valsala K and Another, where the Court has authoritatively held that the amending Act was only prospective in its operation.

2. When the appeals came up for hearing, before the Single Bench the maintainability thereof was questioned by Counsels appearing for the respondent-claimants. It was argued that the decisions of this Court in New India Assurance Co. Ltd. Vs. Raja Naika and another, and Oriental Insurance Co. Ltd. Vs. Veronica

Obrin (Smt.) and Others, clearly declared that appeals by Insurance Companies were not maintainable except on defenses that were otherwise open to such companies u/s 149 of the Motor Vehicles Act. It was contended that the question whether or not the Amending Act No, 30 of 1995 was applicable to the claims made by the respondents eventually made a difference only insofar as the determination of the quantum of compensation was concerned. The Insurance Company could not however maintain an appeal insofar as the quantum of compensation awarded by the Commissioner was concerned. The Single Bench considered it proper to make a reference to a larger Bench for an authoritative pronouncement on the question raised before him. That is precisely how the present appeals have been placed before us for hearing.

3. Appearing for the appellant-Insurance Companies, M/s. Shankar and Raju submitted that the reference made by the Single Bench could be confined to the question whether or not the Insurance Companies can maintain an appeal against the orders made by the Commissioner under the Workmen's Compensation Act as regards the quantum of compensation awarded by him. It was urged that the Supreme Court had in *United India Insurance Co. Ltd. Vs. Bhushan Sachdeva and Others*, examined a similar question in the context of the provisions of Section 173 of the Motor Vehicles Act. The Court was in that case examining whether an Insurance Company could be said to be an aggrieved person u/s 173 of the Motor Vehicles Act so as to entitle it to prefer an appeal against an award made by the Motor Accident Claims Tribunal having regard to the fact that the insured had not preferred any appeal against the award made by the Tribunal. In the opinion of the Insurance Company the award made by the Tribunal was in violation of the principles of natural justice, unjust and arbitrary, but since no appeal could be maintained by it against the award, it had chosen to invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution and seek an interim stay of the award pending disposal of its petition. The High Court had declined to make any interim order. It was against the refusal of an interim stay that the matter was taken up to the Supreme Court by Special Leave. The Supreme Court held that the appellant was not correct in assuming that it had no right of appeal before the High Court u/s 173 of the Act. The Court held that so long as the insured had not challenged the award passed by the Tribunal and so long as the liability would fall only on the Insurance Company, it would be inequitable to deny to the Insurance Company a remedy by way of an appeal. The Court observed.-

"In our view, the stand of the appellant that it cannot file an appeal at all before the High Court u/s 173 of the Act is based on an erroneous assumption. So long as the insured has not challenged the award passed against him and so long as the liability would only fall on the Insurance Company it is inequitable to deny a remedy of appeal to the Insurance Company".

4. The Court went on to hold that after conducting an enquiry into the claim lodged before it, the Tribunals have no jurisdiction to pass an award arbitrarily or

as they like. An award determining the amount of compensation can be passed only if it appears to the Tribunal to be just. The Court held that Nationalised Insurance Companies in India are holding public money and what they are dealing with is a public fund. They are therefore accountable to the public for every pic of it. If no Insurance Company should feel aggrieved even when the award is seemingly unjust and if the award amount is allowed to go out of the public fund, it is the public interest which would suffer. An interpretation denying the aggrieved Insurance Company an opportunity to seek a legal remedy by way of appeal should not, declared the Court, be adopted unless there is statutory compulsion. There was however no such compulsion, observed the Court, in Section 173 of the Motor Vehicles Act with the result that the Insurance Companies can also fall within the ambit of the words "any person aggrieved by an award of Claims Tribunal" used in Section 173(1) of the Act in cases where the insured fails to file an appeal against the award. Two earlier decisions of the Supreme Court cited before their Lordships in *Narendra Kumar and Another Vs. Yarenissa and Others*, and *Chinnama George and Others Vs. N.K. Raju and Another*, were distinguished on the ground that in those cases appeals had also been filed by the insured challenging the award. The Court summarised its conclusion in the following words.-

"We, therefore take the view that it is open to the Insurance Company to invoke the right u/s 173 of the Act as the insured had failed to appeal against the award passed against him. That being the position, the revision petition filed by the appellant before the High Court should be treated as an appeal petition u/s 173 of the Act. Appellant can be allowed by the High Court to amend the petition to include grounds of appeal etc. It is open to the appellant to move an application before the High Court for that purpose. If any application is filed by the applicant before the High Court for stay of execution of the award the same has to be considered on the merits of it and appropriate orders thereon can be passed".

5. The question then is whether in the light of the law declared by the Supreme Court in the above case, the decision of this Court in *Raja Naika's case*, supra, could continue to hold good insofar as the right of an Insurance Company to prefer an appeal against an order made by the Commissioner under Workmen's Compensation Act is concerned. In *Raw Naika's case*, supra, this Court had declared that an appeal by Insurance Company u/s 13(1) of the Workmen's Compensation Act against an award made by the Commissioner making the company liable to pay compensation for death or for bodily injury to a person on the basis of a certificate of insurance, is maintainable only on ground enumerated in Section 149(2) of the Motor Vehicles Act. In other words, the restriction on the defenses which an Insurance Company can set up in regard to a claim arising under the Motor Vehicles Act were incorporated even in regard to proceedings under the Workmen's Compensation Act. The argument that the limitation as regards the grounds of defenses available to an insurer should apply only when action is taken before a Claims Tribunal, was specifically noticed and rejected. To the same effect is the decision of this Court in *Oriental Insurance*

Company Limited's case, *supra*, and the decision of the Single Bench of this Court in *United India Insurance Company Limited, Bangalore Vs. Venkataraju and Another*, .

6. The legal position as enunciated in the said three decisions must, in the light of the decision of the Supreme Court in *Bhushan Sachdeva's case*, *supra* correspondingly undergo a change. That is because if u/s 173 of the Motor Vehicles Act. an Insurance Company aggrieved of an award made by the MACT can maintain an appeal even in regard to the quantum of compensation awarded, where the insured has not preferred such an appeal, there is no reason why that position should not hold good when the claimant exercises his option u/s 167 of the Motor Vehicles Act and lodges a claim before the Commissioner instead of the Tribunal established under the Motor Vehicles Act. Just as the Supreme Court in *Bhushan Sachdeva's case*, *supra* did not find anything in Section 173 of the Motor Vehicles Act to debar the Insurance Company from resorting to the remedy of appeal, where the award is found by it to be unjust so also there is nothing in Section 30 of the Workmen's Compensation Act, which can possibly debar the Insurance Company from preferring an appeal against an order made by the Commissioner under the Workmen's Compensation Act. As a matter of fact, Section 30 of the said Act does not make use of the words "any person aggrieved by an award" found in Section 173 of the Motor Vehicles Act. It on the contrary authorises an appeal to the High Court from the orders enumerated in Sub-section (1) thereof subject to the condition that the appeal involves a substantial question of law. That would not however mean that an appeal can be preferred by even a party not aggrieved of the order made by the Commissioner. But what is clear is that so long as an appeal involves a substantial question involves so long as the insured has not preferred such an appeal, the Insurance Company which has been saddled with the liability to pay the compensation amount would be entitled to prefer an appeal and seek adjudication of the substantial questions of law raised by it. Just because such questions or any one of them, relate to or touch upon the quantum of compensation awarded by the Commissioner would not debar the filing of such an appeal by the Insurance Company. Suffice it to say that the view taken by the Division Bench of this Court in *Raja Naika's case*, *supra*, and other two decisions referred to earlier that no appeal will be maintainable at the instance of the Insurance Company on any matter other than those specified in sub-section (2) of Section 149 of the Motor Vehicles Act does no longer hold good in the light of the decision of the Supreme Court in *Bhushan Sachdeva's case*, *supra*. To sum up;

7. An appeal filed by the Insurance Company against an order passed by the Commissioner under the Workmen's Compensation Act holding the former liable to pay compensation would be maintainable before the High Court u/s 30 of the Workmen's Compensation Act provided the insured has not preferred any such appeal and provided further the appeal involves substantial questions of law; within the meaning of the proviso to Sub-section (1) of Section 30 of the said Act- The reference is accordingly answered with the direction that the appeals shall

now be posted for hearing before the appropriate Single Bench.