
(2007) 06 GAU CK 0022
In the Gauhati High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Commissioner for Workmen's Compensation, Zone III

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 28, 30

Citation : (2008) ACJ 2537 : (2007) 115 FLR 802

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 ("the W.C. Act"), against the order dated 22.1.2003, passed in W.C. No. 40 of 2001, by the Commissioner for Workmen's Compensation, Zone III, Tezpur, whereby the learned Commissioner refused to register an agreement of compromise made u/s 28 of the W.C. Act, whereby the parties to the claim proceeding had agreed that the workman shall receive a sum of Rs. 90,000, as compensation, for the disablement, which the workman had suffered. While refusing to register the agreement aforementioned, the learned Commissioner directed the insurer to enhance the compensation amount from Rs. 90,000 to Rs. 1,50,000 and submit a fresh petition for registration of the agreement in terms of the provisions of Section 28 of the W.C. Act. Aggrieved by the refusal to register the agreement, as had been sought for by the parties and the direction given to the insurer to enhance the compensation amount, as mentioned hereinbefore, the insurer has preferred this appeal.

2. Substantial questions of law, which have arisen in the present appeal are, thus: Whether a Commissioner is legally empowered to refuse to register an agreement u/s 28 of the W.C. Act, on the ground of inadequacy of compensation agreed to be paid to and received by the workman and whether in the facts and circumstances of the present case, the Commissioner was within the ambit of his powers in refusing to register the agreement in question?

3. I have heard Mr. K. Paul, learned Counsel for the insurer appellant and Mr.

S.C. Biswas, the learned Counsel for the workman-respondent.

4. For better appreciation of the question, which has been raised in the present appeal, an analysis of the provisions of Section 28 of the W.C. Act is necessary. With this object in view, Section 28 of the W.C. Act is reproduced below:

28. Registration of agreements.- Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that:

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) x x x

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by a reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

5. From a careful and dispassionate reading of Section 28 of the W.C. Act, what becomes transparent is that an agreement settling the quantum of compensation payable by the employer or insurer to the workman, shall not be accepted by the Commissioner if it appears to the Commissioner that the amount, under the agreement, is payable to a woman or a person suffering from a legal disability on the ground that the sum or the amount, which is agreed upon to be paid, is inadequate or that the agreement has been reached by playing fraud or under undue influence or through other improper means.

6. What emerges from the above discussion is that a Commissioner can refuse to register an agreement u/s 28 of the W.C. Act on the ground of inadequacy of the amount of compensation agreed to be paid if the compensation is payable to a woman or to a person under legal disability. If the person, to whom the compensation payable, is not a woman or a person under legal disability, the Commissioner cannot refuse to register the agreement on the ground that the sum offered as compensation is inadequate. In short, the question of inadequacy

is relevant only when the compensation is payable to a woman or a person under legal disability. To put it a little differently, the Commissioner can refuse to record a memorandum of agreement if it appears to him that the amount of compensation, which is agreed upon to be paid, to a woman or a person under a legal disability is inadequate or that the agreement has been reached by fraud or undue influence or through other improper means.

7. In the present case, the person, who was to receive the compensation, is not a woman or a person under a legal disability, hence, inadequacy of the compensation, offered to be paid, could not have been made a ground for refusing to register the agreement. Furthermore, the learned Commissioner has not recorded any finding to the effect that the agreement between the parties was reached by playing fraud or under undue influence or through other improper means. Without a finding having been reached to the effect that the compromise had been reached by playing fraud or under undue influence or through other improper means, the learned Commissioner ought not to have refused to register the agreement, in question.

8. What emerges from the above discussion is that impugned order, whereby the learned Commissioner refused to register the agreement for compensation, reached by the parties concerned, on the ground that the amount of compensation, as agreed upon by the parties, was inadequate, is not in conformity with the provisions contained u/s 28 of the W.C. Act. The impugned order cannot, therefore, be sustained.

9. What, now, is of utmost importance to note is that the insurer, while preferring the present appeal, did not deposit the sum of Rs. 90,000, which had been agreed upon by the insurer to pay to the workman, as compensation. Though there was no statutory liability on the part of the insurer to deposit the amount, which the insurer had offered, the fact remains that the insurer could have deposited, in this Court, the amount of Rs. 90,000 as compensation for the workman so that the workman could have, if he had so wished, withdrawn the amount without prejudice to his rights, if any, in this appeal.

10. Because of what have been discussed and pointed out above, this appeal partly succeeds. Impugned order dated 22.1.2003 is hereby set aside and the learned Commissioner is hereby directed to register the agreement in terms of the compromise, which had been reached between the parties concerned. It is, however, made clear that the said sum of Rs. 90,000 shall be liable to be paid by the insurer appellant to the workman-respondent with interest at 9 per cent per annum w.e.f. 20.1.2003 until realisation of the entire amount.

11. For the purpose of avoiding further delay in the disposal of the proceedings, it is hereby directed that the learned Commissioner shall pass appropriate order(s) within a period of two weeks from the date of receipt of a certified copy of this order or the case record, whichever is earlier.

12. The parties are at liberty to furnish a certified copy of this order to the

Commissioner for Workmen's Compensation, Zone III, Tezpur.

13. With the above observations and directions, this appeal shall stand disposed of. Send back the L.C.R.