

(1994) 11 OHC CK 0009
In the Orissa High Court
Case No : M.A. No. 613 of 1991

United India Insurance Co. Ltd.

APPELLANT

Vs

Sasikala Sahoo and Others

RESPONDENT

Date of Decision : 27-11-1994

Acts Referred:

Workmens Compensation Act, 1923 — Section 20, 21(2)

Citation : (1995) 2 LLJ 1235

Hon'ble Judges : B.N. Dash, J

Bench : Single Bench

Advocate : A.K. Mohanty, K.K. Nayak and K. Acharya, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Dash, J.—This appeal arises out of the order dated October 11,1991 passed by the Commissioner under the Workmen's Compensation Act-Cum-Addl. District Magistrate, Puri (hereinafter referred to as "the Commissioner at Puri") directing payment of compensation of Rupees 69,411/- with interest at the rate of 6% per annum from the date of accident to the respondents 1 and 2 by the United India Insurance Company Limited (Appellant).

2. Admittedly, the husband of respondent No. 3 was the owner of the truck bearing registration No. OSU 3375 which had been insured with the appellant. Respondents 1 and 2 claiming themselves as the dependents of late Prasanta Kumar Sahoo filed an application claiming compensation of Rs. 1,50,(KX)/- under the Workmen's Compensation Act, 1923 (in short, "the Act") for the death of Prasanta Kumar Sahoo while in employment as a helper in the aforesaid truck. The injuries sustained by the deceased arose out of and in course of his employment as helper, as alleged. The accident resulting in death of the deceased having taken place at Tepurghat under Tapur Pol ice Station in the district of Dharmapuri (Tamil Nadu), the claim application was initially filed before the Commissioner of Workmen's Compensation, Tamil Nadu. On the application of respondent No. 1 for transfer of the case to the Commissioner at

Puri, notices were issued to the other parties and thereafter the case was transferred to the Commissioner at Puri. The said Commissioner granted a compensation of Rs. 69,411/-holding that the monthly income of the deceased; was Rs. 800/- and his age was 25 years at the time of the accident. Since the vehicle in question had been validly insured covering the date of the accident, the appellant was directed to pay the compensation. Being aggrieved by such order,; the present appeal has been filed.

3. Mr. A.K. Mohanty, the learned counsel for the appellant has urged that the impugned award is vitiated in law because the Commissioner at Puri had no jurisdiction to pass the award, the accident resulting in death of the deceased having taken place in the State of Tamil Nadu, Mr. B.A. Nayak, the learned counsel for the respondent 1 and 2, on the other hand, supports the impugned award.

4. The contention of Mr. Mohanty is based on the second proviso to Sub-section (2) of S.21 of the Act. Section 21 deals with venue of proceedings, and transfer. Sub-section(1) thereof says that subject to the provisions of the Act and to any rules made thereunder, any matter under this Act shall be done by or before a Commissioner for the area in which the accident took place which resulted in the injury. Sub-section (2) thereof deals with transfer of a proceeding under the Act and the same is extracted hereunder.

S 21. Venue of proceedings and transfer

(1) XX XX XX

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in (he same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and. where the matter is transferred for disposal, shall also transmit in the prescribed manner any money receiving in his hands or invested by him for the benefit of any party to the proceedings.

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order or transfer relating to the distribution among dependents of a lump sum without giving such party an opportunity of being heard.

Provided further that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same State save with the previous sanction of the State Government or to a Commissioner in another State have with previous sanction of the State Government of that State, unless all the parties to the proceedings agree to

transfer."

This sub-section empowers a Commissioner to transfer any matter arising out of any proceedings pending before him to any other Commissioner, whether in the same State or not, if he is satisfied that the matter can be conveniently dealt with by any other Commissioner. This subsection consists of two provisos. The second proviso with which we are concerned controls the power or jurisdiction of a Commissioner and it says that a matter in the proceeding relating to the actual payment to a workman or the distribution among the dependents of a lump sum can be transferred to any other Commissioner but if the proceeding is required to be transferred for any other matter, the same can be done only when all the parties to the proceeding agree to the transfer. That is not all. Even if all the parties agree for transfer of the proceeding to any other Commissioner, the same cannot be done unless the Commissioner takes previous sanction of the State Government under whom he works, if the transfer is to be made to another Commissioner of the same state and if the transfer is necessary to be made to a Commissioner of another State, then prior sanction of the State Government of that State has to be obtained before transferring the proceeding. Mr. Nayak for the respondents submits that the sanction of the State Government is not necessary, if parties to the proceeding agree for the transfer of the proceeding. Such contention is not acceptable for the reasons the first being that any of the proviso does not visualise such a situation and secondly because u/s 20 of the Act the territorial jurisdiction of a Commissioner under the Act is required to be notified by the State Government under whom he works.

5. In the present case there is nothing to show that prior sanction of the State of Orissa had been obtained by the Commissioner at Tamil Nadu who transferred the proceeding to the Commissioner at Puri in Orissa. On the other hand, the order dated August 22, 1990 passed by the Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Salem (Tamil Nadu) in W.C. Case No. 160 of 1990 available in the LCR shows that because the opposite parties therein did not object to the petition for transfer even after issue of notice, he transferred the proceeding to the Commissioner at Puri in Orissa by exercising the powers u/s 21(2) of the Act. So it is obvious that the transfer of the proceeding was made without obtaining prior sanction of the State of Orissa and as such, the transfer was bad in law.

6. It is contended by Mr. Nayak for the respondents 1 and 2 that since no objection was raised by the appellant at the time of hearing of the proceeding before the Commissioner at Puri on the question of transfer, he cannot be permitted to raise the point for the first time in this Court. His contention is founded u/s 21 CPC. Such provision cannot be taken into consideration in a proceeding under the Act because the Commissioner under the Act gets jurisdiction under the provisions of the Act. As already indicated earlier, Sub-section (1) of Section 21 gives a clear mandate that the proceeding has to be tried by the Commissioner within whose area the accident took place which

resulted in the injury. In that view of the matter, the Commissioner at Tamil Nadu had the jurisdiction to deal with the proceeding and he could transfer the proceeding to any Commissioner in the State of Orissa only after obtaining prior sanction of the State of Orissa. The same having not been done, the Commissioner at Puri inherently lacked jurisdiction in disposing of the proceeding and as such, the impugned order cannot be sustained.

7. In the result, the appeal is allowed and the impugned order is vacated. It will be open to the respondents 1 and 2 to move the appropriate authority for obtaining necessary sanction for transfer of the proceedings from the Commissioner for Workmen's Compensation, Tamil Nadu to such officer in Orissa. In view of this, it is not necessary to pass any order on the cross objection.