

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO(WC) 6/2021 CM(2206/2022) CM(8700/2021)

NATIONAL INSURANCE COMPANY LIMITED ...Petitioner(s)/appellant(s)

Through: Mr. Aatir Javed Kawoosa, Advocate

Vs.

ZAHOOR AHMAD SOFI AND ORS ...Respondent(s)

Through: Mr. Malik Mushtaq, Advocate

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

07.06.2024

Oral:

1. The instant appeal has been filed by the National Insurance Company Limited appellant herein against award dated 10.11.2021 (for short the impugned award) passed by the Commissioner under **Employees Compensation Act 1923** (for short the Act of 1923) in case titled as **“Zahoor Ahmad Sofi Vs. Suhail Ahmad Allie &Ors.”**
2. Facts giving rise to the filing of the instant appeal would reveal that a claim petition came to be filed by the respondent 1 herein before the Commissioner under in terms of the provisions of Act of 1923 for compensation alleging therein that the claimant while working as a driver for plying vehicle bearing registration No. JK03D-8971 suffered a serious injury in his eye during a stone pelting in incident at Bijbihara on 18.08.2016 and incurred considerable amount of money on its treatment and that, as such, became entitled to claim compensation under the Act of 1923 from the owner of the vehicle namely Showkat Ahmad Malik respondent 3 herein impleading the appellant herein as well a party

respondent in the claim petition on account of the fact that the vehicle in question was insured with it.

3. The Commissioner after entertaining the claim petition issued notice to the respondents being the respondent 3 herein and the appellant herein, however, during the pendency of the claim petition, the claimant respondent 1 herein sought amendment of the claim petition for impleading the registered owner of the vehicle being respondent 2 herein as a party respondent and also to amend the claim petition to the extent of mentioning the respondent 3 herein as the attorney holder of the registered owner of the vehicle respondent 2 herein.
4. Prior to the aforesaid amendment of the claim petition, out of the two original respondents therein in the claim petition, the respondent Insurance Company appellant herein alone appeared and filed its response to the claim petition contending therein that the Showkat Ahmad Malik respondent 3 herein is not registered owner of the vehicle and that since the claimant respondent 1 herein had been engaged by him as a driver of the vehicle in question, as such, the Insurance Company appellant herein is not liable to indemnify the said Showkat Ahmad Malik being not the registered owner of the vehicle.
5. After the aforesaid amendment of the claim petition and upon the impleadment of the actual registered owner of the vehicle being respondent 2 herein, the said respondent 2 herein filed reply to the claim petition and admitted to be the registered owner of the vehicle in question besides admitting that the respondent 3 herein to be his attorney *qua* the vehicle in question having been authorized by him to manage the affairs of the vehicle in question, admitting further that the claimant respondent 1

herein have had been lawfully engaged by his said attorney as a driver of the vehicle in question.

6. The Commissioner during the course of the adjudication of the claim petition examined the claimant respondent 1 herein as also two witnesses produced by him namely Shabir Ahmad Kuchay and Dr. Abdul Gani, Medical Officer, in support of his claim set up in the claim petition inasmuch as to discharge the onus *qua* the issues framed by the Commissioner on 27th July, 2019 in the matter, whereas the contesting respondent appellant herein did not produce any evidence in the matter whereupon the Tribunal after adjudication of the claim petition passed the impugned award dated 10.11.2021, holding the claimant respondent 1 herein entitled to the compensation of Rs. 16,26,547/- out of which, the Insurance Company appellant herein was directed to deposit the principal amount of compensation being Rs. 10,16,592/- and respondents 1 & 2 herein to deposit the interest of Rs. 6,09,966/- accrued thereon the said amount, jointly and severally.
7. The Insurance Company appellant herein has called in question the impugned award on multiple grounds urged in the memo of appeal and in furtherance thereof has framed the following question to be as substantial question of law for determination of this Court in the instant appeal: -

“Whether the Ld. Commissioner has been right in fastening the liability upon the Appellant Company when there was no contract of employment between the insured and the claimant as the insured had not employed the claimant as a driver” and also “Whether the Ld. Commissioner is right in holding that the claimant was employed by the insured, when as a matter of fact the claimant was employed by the Respondent No. 3 who had not insured the vehicle in question.”

Heard learned counsel for the parties and perused the record.

8. Record of the proceedings reveals that the respondents 2 & 3 being the registered owner of the vehicle and his attorney constituted by him *qua* the vehicle in question have chosen to remain absent despite service of notice issued by this Court.
9. Before proceeding to advert to the instant appeal, it would be pertinent and significant to mention here that the Act of 1923 is a welfare legislation intended to provide an injured workman or the dependants of a deceased workman who is injured or meets his death by an accident arising out of an or in the course of his employment. **Section 9** of the Act lays down a scheme for determination of compensation payable to the injured workman or to his dependants which is less time consuming, hassle free and intended to ensure that the claim petition is dealt with and disposed of with proper due dispatch. The underlying object of the Act 1923 is that the injured workman or the dependants of the deceased workman should not be left high and dry without any source to fall back upon. It is part of the said object, that the employer against whom an award is made is required to deposit the same with the Commissioner under the Act of 1923 and an employer is deprived of right to file appeal against the award unless and until the employer in the first instance makes deposit of the compensation amount with the Commissioner under the Act of 1923 as the purpose under the Act of 1923 again, in short, is that the payment of compensation determined by the Commissioner is paid to the workman and is not halted by procedural wrangles and further litigation frustrating the very purpose of the Act of 1923.

With the aforesaid underlying object in place a provision of appeal has been provided under Section 30 of the Act, which reads as under: -

"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 lumpsum;

[(aa) an order awarding interest or penalty under section 4A;]

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

(c) an order providing for the distribution of compensation among the dependants of a deceased [employee), 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 subsection (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 [ten thousand rupees] or such higher amount as the Central Government may, by notification in the Official Gazette, specify]:

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 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."

A bare perusal of the aforesaid section tends to show that an appeal against the order awarding compensation and against an order awarding interest on penalty is to be entertained only by this Court if **asubstantial question of law** is involved and in case of an appeal filed by an employer, the appeal is required to be accompanied by a certificate of the Commissioner that the employer has deposited with him the amount payable under the order appealed against, making it manifestly clear that the scope of appeal provided under Section 30 of the Act, against an award passed by the Commissioner is very limited.

10. Keeping in mind the aforesaid position of law and reverting back to the case in hand, perusal of the record reveals that the Insurance Company appellant herein being respondent in the claim petition before the Commissioner have had raised a fundamental issue in opposition to the claim petition that the claimant respondent 1 herein was not engaged as a driver by the actual registered owner of the vehicle in question and, as such, it was not liable to pay any compensation to the claimant respondent 1 herein as the said claimant respondent 1 herein as per his own version have had been engaged not by the registered owner, but by one Showkat Ahmad Malik being respondent 3 herein.

11. It is not in dispute that initially at the time of filing of the claim petition by the respondent 1 herein before the Commissioner, the claimant respondent 1 herein impleaded the said Showkat Ahmad Malik as party

respondent in the claim petition in the capacity as owner of the vehicle in question besides impleading the Insurance Company appellant herein. It is also not in dispute that subsequently during the pendency of the claim petition, the claimant respondent 1 herein by way of an amendment impleaded the actual registered owner of the vehicle in question namely Suhail Ahmad Allie as a party respondent being respondent 2 herein and also by way of amendment pleaded in the claim petition that the said actual owner have had appointed the above named Showkat Ahmad Malik respondent 3 herein as attorney *qua* the vehicle in question. It is also not in dispute that the said amendment came to be allowed by the Commissioner, whereupon the said registered owner being respondent 2 herein filed response to the claim petition and admitted the fact of said Showkat Ahmad Malik to be his attorney appointed and constituted by him *qua* the vehicle in question vested with an authority to engage the driver of the vehicle and had engaged the claimant respondent 1 herein as the driver of the vehicle.

12. Further perusal of the record manifestly demonstrates that the claimant respondent 1 herein in order to prove issues framed by the Commissioner in the claimed petition appeared as his own witness besides examining the above named two witnesses one being Shabir Ahmad Kuchay and the other one Dr. Abdul Gani, Medical Officer. The perusal of the statement of said witnesses do reveal that the claimant respondent 1 herein has proved the fact of employee-employer relationship between him and the owner of the vehicle in question as also the fact of having suffered an injury to his eye on the date of accident during the course of his employment besides having proved the expenses incurred by him on the treatment of his eye. Record also tends to show that upon closure of the

evidence of the claimant respondent 1 herein by the Commissioner, the Insurance Company appellant herein being respondent in the claim petition did not choose to produce any witness to support the plea raised by it before the Commissioner in opposition to the claim petition. A deeper examination of the impugned award would reveal that the Commissioner having regard to the facts and circumstances of the case inasmuch as the material available thereon including the evidence led by the claimant respondent 1 herein rightly passed the impugned award and granted a just and fair compensation to the claimant respondent 1 herein on account of the disability suffered by him during the course of his employment.

13. Insofar as the grounds urged in the memo of appeal by the Insurance Company appellant herein are concerned inasmuch as the proposed substantial question of law framed in the memo of appeal is concerned, it is evident that the said proposed question in essence do not constitute a substantial question of law or least even a question of law, as the foundation of the said question indisputably refers to the dispute of the employee-employer relationship disputed by it before the Commissioner which plea stands rightly adverted to and addressed by the Commissioner on the basis of credible evidence led by the claimant respondent 1 herein being essentially based on facts in opposition to which, the insurance company appellant herein did not lead any evidence or discredited the evidence led by the claimant respondent herein.

14. Under the aforesaid circumstances, the proposed substantial question of law in the memo of appeal by the insurance company appellant herein is held to be not a substantial question of law having regard to the facts and circumstances of the case.

15. Viewed thus, the appeal fails and is accordingly **dismissed**.

(Javed Iqbal Wani)
Judge

SRINAGAR
07.06.2024
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Whether the Order is reportable? Yes/No.

Whether the Order is speaking? Yes/No

