SMT. T.S. SHYLAJA A

v.

ORIENTAL INSURANCE CO. & ANR.

(Civil Appeal No. 51 of 2014)

JANUARY 3, 2014 B

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Workmen's Compensation Act, 1923:

s.30, first proviso – Substantial question of law – Appeal before High Court against order of Commissioner awarding compensation – Held: In terms of the 1st proviso, no appeal is maintainable against any order passed by Commissioner unless a substantial question of law is involved – In the instant case, High Court has neither referred to nor determined any question of law much less a substantial question of law existence whereof was a condition precedent for maintainability of an appeal u/s 30 — Inasmuch as the High court remained oblivious of the basic requirement of law for maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts, it committed an error which needs to be corrected. C D E

Claim petition – Death of a driver – Commissioner awarding compensation – High Court setting aside the award holding that relationship of employer and employee was not proved – Held: Commissioner had recorded a finding of fact that deceased was employed as a driver by owner of vehicle no matter the owner happened to be his brother — That finding could not be lightly interfered with or reversed by High Court — The order of High Court is set aside and that passed by Commissioner restored. F G

A vehicle being driven by the appellant's son collided with another vehicle, resulting in his death. The

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A Commission for Workmen's Compensation allowed a compensation of Rs.4,48,000/-. However, the High Court in the appeal filed by the insurer held that the relationship between the deceased and his brother the owner of the vehicle he was driving was not satisfactorily proved to B be that of an employee and an employer and that the only remedy was by way of a claim for payment of compensation under the Motor Vehicles Act. In the instant appeal filed by the mother of the deceased, it was contended that since no substantial question of law was C involved in the case, High Court should not have entertained the appeal in view of the provisions of s. 30 of the Workmen's Compensation Act, 1923(rechristened as Employee's Compensation Act, 1923).

Allowing the appeal, the Court

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HELD: 1.1. In terms of the 1st proviso to s.30 of the Workmen's Compensation Act, 1923, no appeal is maintainable against any order passed by the Commissioner unless a substantial question of law is E involved. This necessarily implies that the High Court would in the ordinary course formulate such a question or at least address the same in the judgment especially when it takes a view contrary to the view taken by the Commissioner. [para 8] [41-D-F]

F 1.2. In the case at hand, the Commissioner for Workmen's Compensation had appraised the evidence adduced before him and recorded a finding of fact that the deceased was indeed employed as a driver by the owner of the vehicle no matter the owner happened to G be his brother. That finding could not be lightly interfered with or reversed by the High Court. The High Court overlooked the fact that the respondent-owner of the vehicle had appeared as a witness and clearly stated that the deceased was his younger brother, but was working H as a paid driver under him. [para 9] [41-F-H]

1.3. The High Court has neither referred to nor determined any question of law much less a substantial question of law existence whereof was a condition precedent for the maintainability of any appeal u/s 30. Inasmuch as the High court remained oblivious of the basic requirement of law for the maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts, it committed an error which needs to be corrected. [para 10] [43-A-C]

1.4. Besides, the only reason which the High Court has given to upset the finding of the Commissioner is that the Commissioner could not blindly accept the oral evidence without analysing the documentary evidence on record. But it has not indicated as to what was the documentary evidence which the Commissioner had failed to appreciate and what was the contradiction, if any, between such documents and the version given by the witnesses examined before the Commissioner. The High Court could not have, without adverting to the documents vaguely referred to by it have upset the finding of fact which the Commissioner was entitled to record. [para 10] [42-F-H; 43-A]

1.5. The order of the High Court is set aside and that passed by the Commissioner restored. [para 11]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 51 of 2014.

From the Judgment & Order dated 25.03.2011 of the High Court of Karnataka at Bangalore in MFA No. 738 of 2009 (WC).

G.V. Chandrashekher, N.K. Verma, Anjana Chandrashekar for the Appellant.

Manish Pratap Singh, Ajay Singh, Dr. Nafis A. Siddiqui, Debashhish M., for the Respondents.

A The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

2. The short question that falls for consideration in this appeal is whether the High Court was justified in setting aside B the order passed by the Commissioner for Workmen's Compensation holding the appellant entitled to an amount of Rs.4,48,000/- towards compensation with interest @ 12% per annum.

C 3. The claim before the Commissioner arose out of a motor accident in which the deceased-Prahlad lost his life while driving a Toyota Qualis vehicle bearing registration No.KA-02/ C-423. The incident in question, it appears, occurred on 3rd September 2000 near Bidadi Police Station, on the Bangalore-D Mysore highway involving a head on collision with a Tipper Lorry bearing No.KA-02-B-9135. The deceased was removed to the hospital where he died two days after the accident. A claim petition was then filed before the Commissioner for Workmen's Compensation, Bangalore Sub-Division-IV, Bangalore by the E appellant, mother of the deceased for payment of compensation. The claim petition alleged that the deceased was employed as a driver on a monthly salary of Rs.6,000/- by the owner of the vehicle. The vehicle being insured with the respondent-company, the claimant sought recovery of the amount from the company in terms of provisions of the F Workmen's Compensation Act, 1923, now re-christened as the Employee's Compensation Act, 1923. The insurance company contested the claim primarily on the ground that the jural relationship of employer and employee did not exist between the owner and the deceased. It was also contended that it was G the negligence of the deceased that had caused the accident thereby disentitling the claimant to any compensation.

4. On the pleadings of the parties, the Commissioner framed six issues for determination and eventually came to the H conclusion that the deceased was indeed working as a paid

driver of the owner of the vehicle, Toyota Qualis and that the claimant, the appellant herein was entitled to receive an amount of Rs.4,48,000/- towards compensation having regard to the fact that the deceased was just about 20 years of age at the time of accident and was receiving Rs.4,000/- per month towards salary. An award for the said amount was accordingly made by the Commissioner with interest @12% per annum against the respondent-company who had admittedly underwritten the risk in terms of a policy issued by it.

5. Aggrieved by the award made by the Commissioner, the respondent-company preferred an appeal, M.F.A. No. 738 of 2009 before the High Court of Karnataka at Bangalore which has been allowed by a Single Judge of that Court in terms of the order impugned order before us. The High Court was of the view that the relationship between the deceased and his brother the owner of the vehicle he was driving was not satisfactorily proved to be that of an employee and an employer and that the only remedy which the appellant, mother of the deceased had, was by way of a claim for payment of compensation under the Motor Vehicles Act.

6. Appearing for the appellant Mr. G.V. Chandrashekhar, learned counsel, strenuously argued that the High Court was in error in entertaining the appeal and in reversing the view taken by the Commissioner by re-appraising the evidence on record. He urged that the High Court remained oblivious of the provisions of Section 30(1) of the Act which clearly stipulate that no appeal shall lie against any order of the Commissioner unless a substantial question of law fell for consideration. No such question of law arose for consideration nor was the same framed or addressed by the High Court in the course of the judgment. The reasoning given by the High Court was, according to the learned counsel, vague and based entirely on surmises and conjectures hence unsustainable in law.

7. Section 30 of the Employees Compensation Act, 1923

A no doubt provides for an appeal to the High Court from the orders passed by the Commissioner and enumerated in clauses (a) to (e) sub-Section (1) of Section 30. Proviso to Section 30(1), however, makes it abundantly clear that no such appeal shall lie unless a substantial question of law is involved B 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 three hundred rupees. Section 30(1) reads as under:

C *"30. Appeals.—*

(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:—

(a) an order as awarding as compensation a lump sum D *whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;*

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

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

(c) an order providing for the distribution of compensation F *among the dependants of a deceased workman, 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 sub- G *section (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.

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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 three hundred rupees:

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 to the effect that the appellant has deposited with him the amount payable under the order appealed against."

8. What is important is that in terms of the 1st proviso, no appeal is maintainable against any order passed by the Commissioner unless a substantial question of law is involved. This necessarily implies that the High Court would in the ordinary course formulate such a question or at least address the same in the judgment especially when the High Court takes a view contrary to the view taken by the Commissioner.

9. The Commissioner for Workmen's Compensation had, in the case at hand, appraised the evidence adduced before him and recorded a finding of fact that the deceased was indeed employed as a driver by the owner of the vehicle no matter the owner happened to be his brother. That finding could not be lightly interfered with or reversed by the High Court. The High Court overlooked the fact that the respondent-owner of the vehicle had appeared as a witness and clearly stated that the deceased was his younger brother, but was working as a paid driver under him. The Commissioner had, in this regard, observed:

A *"After examining the judgment of the Andhra Pradesh High Court relied upon by 2nd opponent it is seen that the owner of the vehicle being the sole witness has been unsuccessful in establishing his case but in this proceeding the owner of the vehicle has appeared before* B *this Court even though he is a relative of the deceased, and has submitted in his objections, even evidence that even though the deceased was his younger brother he was working as a driver under him, and has admitted that he was paying salary to him. The applicant in support of* C *his case has submitted Hon'ble High Court judgment reported in ILR 2006 KAR 518. The Divisional Manager, United India Insurance Company Ltd. Vs. Yellappa Bheemappa Alagudi & Ors. which I have examined in depth which holds that there is no law that relatives cannot* D *be in employer employee relationship. Therefore it is no possible to ignore the oral and documentary evidence in favour of the applicant and such evidence has to be weighed in favour of the applicant. For these reasons I hold that the deceased was working as driver under first opponent and driving Toyota Quails No.KA-02-C-423,* E *that he died in accident on 03.09.2005, that he is a 'workman' as defined in the Workmen's Compensation Act and it is held that he has caused accident in the course of employment in a negligent fashion which has resulted in his death".*

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10. The only reason which the High Court has given to upset the above finding of the Commissioner is that the Commissioner could not blindly accept the oral evidence without analysing the documentary evidence on record. We fail G to appreciate as to what was the documentary evidence which the High Court had failed to appreciate and what was the contradiction, if any, between such documents and the version given by the witnesses examined before the Commissioner. The High Court could not have, without adverting to the H documents vaguely referred to by it have upset the finding of

fact which the Commissioner was entitled to record. Suffice it to say that apart from appreciation of evidence adduced before the Commissioner the High Court has neither referred to nor determined any question of law much less a substantial question of law existence whereof was a condition precedent for the maintainability of any appeal under Section 30. Inasmuch as the High court remained oblivious of the basic requirement of law for the maintainability of an appeal before it and inasmuch as it treated the appeal to be one on facts it committed an error which needs to be corrected.

11. We accordingly allow this appeal, set aside the order of the High Court and restore that passed by the Commissioner. We grant three months' time to the respondent to deposit the amount of compensation together with interest, if not already paid or deposited failing which the appellant shall be free to seek redress before the Commissioner for recovery of the amount awarded in her favour. No costs.

R.P. Appeal allowed.