

IN THE HIGH COURT OF DELHI

FAO No. 18/2002

M/s. Oriental Insurance Co. Appellants
! through: Mr.Ram N. Sharma, Adv.

VERSUS

\$ Smt.Narender Kaur & Ors. Respondents
^ through: Mr.M.M.Kalra, Adv.

% DATE OF DECISION: 28.2.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**(Oral)

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+CM No.42/2002

For the reasons stated in the application the same is allowed.

FAO No. 18/2002

1. Question which arises for consideration in the appeal stands concluded by the decisions of the Hon'ble Supreme Court reported as JT 1999 (7) SC 292 Kerala State Electricity Board & Anr. vs. Valsala K.and Anr. followed in the decision reported as 2002 (10) SCC 567 Oriental Insurance Co.

Vs. Khajuni Devi.

2. The Hon'ble Supreme Court has held that under the Workmen Compensation Act, compensation payable has to be with reference to the statutory provisions in force as on date of the accident.

3. Learned counsel for the respondents relies upon a decision of the Hon'ble Supreme Court reported as 2001 (II) ACJ 721 Rathi Menon Vs. UOI.

4. In said decision the Hon'ble Supreme Court has dealt with the issue whether decisions under the Workmen's Compensation Act would be applicable to decisions under the Railway Act. In view of the difference in the scheme pertaining to compensation under the Railway Rules 1990 and Section 4 of the Workmen Compensation Act, it has been held that decisions under the Workmen's Compensation Act pertaining to compensation are not applicable to decisions under the Railways Act, 1989.

5. In the instant case I note that the date of accident is 11.6.1995. The compensation has been assessed by the Commissioner Workmen's Compensation with reference to the amendments incorporated in Section 4 after the accident took place.

6. The impugned order accordingly requires a correction in that, compensation payable has to be determined with

reference to the wages applicable under Sub Clause 'a' of Section 1 of Section 4 of the Workmen Compensation Act as in force on 11.6.1995.

7. The impugned order is accordingly set aside in so far the quantification of the compensation has been determined.

8. I also note that the learned Commissioner has awarded Rs.30,000/- to the claimants. But under what head has not been brought out. Thus said part of the order is also set aside.

9. Parties are directed to appear before the Commissioner Workmen's Compensation on 30.4.2008 who shall recompute the compensation payable and while so doing would consider Section 4(1)(a) of the Workmen Compensation Act as in force on date of accident. Interest would be at the rate and from the date as per the award.

10. I am informed by learned counsel for the appellant that entire amount as per award has been deposited by the appellant with the Commissioner Workmen Compensation. Part amount has been released to the claimants. Thus the Commissioner Workmen's Compensation would recompute the amount payable and would make further disbursements as per said computation. Needless to state excess amount lying in deposit with the Commissioner Workmen's Compensation after disbursement would be returned to the appellant. Similarly, if

excess amounts have been disbursed to the claimants recovery would be made and amount returned to the appellant.

11. No costs.

February 28, 2008
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(PRADEEP NANDRAJOG)
JUDGE