

*** THE HONOURABLE SRI JUSTICE M.SEETHARAMA MURTI**

+ WRIT PETITION No.22633 of 2009

% Dated:- 23rd November, 2015

Bajaj Allianz General Insurance Co. Ltd.

...Petitioner

-

Vs.

\$ The Commissioner for Workmen Compensation and others

...Respondents

! Counsel for the petitioner/s: **Ramachandra Reddy Gadi**, Advocate

^ Counsel for the Respondent/s: **G.P. for General Administration**

(for respondents 1 and 2)

L. Prabhakar Reddy, Advocate

(for respondents 3,4,5 & 6)

S. Sreenivasa Reddy, Advocate

(for respondent No.7)

< Gist :

> Head Note:

? Cases Referred:

1999 (4) ALD 314

2008 ACJ 2168

AIR 2007 SC 3067

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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WRIT PETITION No.22633 of 2009

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ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed by the petitioner/Insurance Company requesting to call for the records and issue an

order/direction or Writ, particularly one in the nature of Writ of Certiorari, and quash the order dated 23.07.2009 in I.A.No.14 of 2009 in W.C.No.112 of 2008 and order dated 08.05.2009 passed in W.C.No.112 of 2008 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-IV, Hyderabad, and consequently declare that the writ petitioner is not liable for payment of compensation to the legal heirs/representatives of the deceased workman.

2. I have heard the submissions of the learned counsel for the writ petitioner/insurance company ('the Insurance Company', for brevity) and the learned counsel for respondents 4 to 6 ('the claimants' for brevity), who are the legal representatives of the deceased workman.

3. The brief facts, which are necessary and relevant for consideration in this writ petition, are as follows:- "The claimants, who are the legal representatives of the deceased workman, had filed a WC case before the learned Commissioner claiming compensation, from the employer of the deceased-cum-owner of the auto trolley bearing registration no. AP 13 X 6829 and the insurance company, for the loss sustained by them on account of the untimely death of the said deceased out of and during the course of his employment as driver on the said vehicle, which was insured with the insurance Company. The insurance company, having entered appearance in the said WC case, had filed its counter. At the time of enquiry, AW1 was examined and exhibits A1 to A5 were marked. AW1 was not cross-examined. In fact, on 17.04.2009, when the exhibits were marked, there was no representation for the opposite parties 1 and 2; and as cross-examination of AW1 was not done, the opposite parties 1 and 2 were set *ex parte*; and, arguments on the side of the applicants were heard by the learned Commissioner and the matter was reserved for judgment. On 08.05.2009, orders allowing the application of the applicants and awarding compensation with interest were passed. Against the said orders, the insurance company did not prefer any appeal as contemplated under the provision of Section 30 of the Workmen's Compensation Act, 1923 (presently known as Employees' Compensation Act, 1923) ('the Act', for brevity). However, the insurance company had filed an interlocutory application in I.A.No.14 of 2009 for setting aside the *ex parte* order dated 08.05.2009 passed in the WC case. The learned

Commissioner, by order dated 23.07.2009, had dismissed the said Interlocutory application.

4. Feeling aggrieved of the said dismissal orders passed by the learned Commissioner, the present writ petition is filed by the Insurance Company *inter alia* contending as follows:- “The Insurance Company is a public limited company. The first opposite party, who is the owner of the vehicle, did not participate in the enquiry before the learned Commissioner and did not cross-examine AW1. A copy of the affidavit filed in lieu of examination in chief of AW1 was not served on the second opposite party/insurance company and no opportunity to cross-examine AW1 was provided as required under law. Having framed three issues for consideration and having taken on file the affidavit filed by AW1 in lieu of his examination in chief and having marked the documents as exhibits, the learned Commissioner had passed the *ex parte* order and that therefore, the said order is arbitrary and unsustainable. The documents, which were filed belatedly before the learned Commissioner, are not filed with a petition to condone the delay in filing the same and no leave was obtained for filing the same. However, the documents were received on file and were permitted to be exhibited. The order passed in the WC case, which is impugned, is devoid of any discussion and reasons. Even the interlocutory application filed for setting aside the *ex parte* order dated 08.05.2009 was dismissed solely on the ground that it was filed two months after the impugned order in the WC case was passed. The learned Commissioner had no jurisdiction to pass the impugned orders. The orders passed without properly exercising the jurisdiction and contrary to the procedure established by law are arbitrary and illegal and are liable to be set aside.”

5. *Per contra*, the contentions of the respondents 4 to 6/the claimants, are as under: “The present writ petition is filed by the insurance company without questioning the orders of the learned Commissioner by availing the alternative remedy of appeal provided under Section 30 of the Act. In this writ petition, the Insurance Company is assailing the orders passed both in the WC case and also in the interlocutory application and such a course is impermissible in law and under facts. Under Section 30 of the Act, if an appeal is to be preferred by the insurance company, the appeal has to be filed within 30 days from the date of the order; further, at the time of

the filing of the appeal, the insurance company is required to make the pre-deposit of the entire amount awarded as compensation by the learned Commissioner; and for entertaining such an appeal, the insurance company has to make out the substantial questions of law; and unless substantial questions of law are involved, the appeal would not lie; and without satisfying the said two pre-conditions, no appeal under Section 30 of the Act would lie. The orders passed by the learned Commissioner in the WC case as well as in the interlocutory application are well reasoned orders. The findings recorded by the learned Commissioner are supported by valid, cogent and sufficient reasons. When an alternative and efficacious remedy under Section 30 of the Act to assail the order of the learned Commissioner passed in the WC case is available, this writ petition is misconceived. If the writ petition is entertained, it would result in anomalous results and would defeat the object of the Act which is enacted to ameliorate the plight of the workmen and their dependants.”

6. The learned counsel for the insurance company would contend that the insurance company having filed its counter in the WC case had resisted the said case; the affidavit in lieu of examination in chief of AW1 was filed before the Commissioner without serving a copy of the same on the learned counsel for the Insurance Company; though the documents mentioned in the affidavit are not filed along with a petition requesting to grant leave to file the same, the learned Commissioner had received both the affidavit and the documents on file and had marked the exhibits; no opportunity to cross-examine AW1 was provided to the insurance company; for non-appearance of the insurance company and non-representation of the matter on its behalf on 17.04.2009, the learned Commissioner was pleased to set the insurance company *ex parte* and had passed the *ex parte* order, which is impugned; in the said circumstances, the Insurance Company had filed the interlocutory application to set aside the *ex parte* order passed in the WC Case; that application was erroneously dismissed; in the facts and the circumstances of the case, the orders passed in the WC Case and the Interlocutory application are both unsustainable and are liable to be set aside and quashed; It is in the interests of justice to provide an opportunity to the insurance company to contest the WC Case on merits by setting aside the orders passed by the learned Commissioner, which are impugned.

7. On the other hand, the learned counsel for the claimants/respondents herein, while reiterating the case pleaded in the counter affidavit, would submit that the writ petition seeking the reliefs to set aside orders passed by the learned Commissioner in the WC case and as well as in the Interlocutory application filed therein is not maintainable in view of the alternative and efficacious statutory remedy of appeal provided under Section 30 of the Act, which is available to the insurance company. In support of the submissions, he had placed reliance on the decision of this Court in ***K.S.Rama Rao Vs. Commissioner for Workmen Compensation and Dy. Commissioner of Labour, Hyd and others*** and the decision of the High Court of Punjab and Haryana at Chandigarh in ***Brij Lal Vs. Commissioner under the Workmen's Compensation Act and others***.

8. I have perused the material record. I have noted the submissions of the learned counsel for both the sides.

9.1 The fact that the vehicle, which the deceased was driving at the time of his involvement in the accident pleaded in the WC case, is insured with the insurance company is not in dispute. When the WC case was pending enquiry before the learned Commissioner, as could be seen from the material record, there was no representation for the insurance company and none appeared on its behalf when the affidavit in lieu of examination-in-chief of AW1 was filed and on the date to which the matter was adjourned for cross-examination of AW1. Perhaps, left with no option, the learned Commissioner had set the insurance company *ex parte* and had proceeded to decide the case on merits, determined the compensation and had passed the orders *ex parte*. The order impugned shows that the learned Commissioner had framed three issues for consideration and had answered the issues after adverting to the pleadings and also the evidence brought on record and by assigning reasons, which are valid. In the well-considered view of this Court, the sustainability of the order passed in the WC Case could have been challenged by the insurance company, on any ground or grounds available, by availing the statutory remedy of appeal provided under Section 30 of the Act. Admittedly, the insurance company, without preferring the appeal under Section 30 of the Act, had filed an application in I.A.No.14 of 2009 before the learned Commissioner for setting aside the *ex parte* order in the WC Case. The learned Commissioner, having adverted to the day-to-

day docket orders made in the WC case, had passed a detailed order dated 23.07.2009 dismissing the said interlocutory application. Even that order was not challenged by the insurance company by following the procedure established by law and by availing the remedies, which the law permits. Without availing the statutory remedies, this writ petition was brought by the insurance company assailing both the said orders.

9.2 Before proceeding further, it will be advantageous to refer to Section [30](#) of the Act, the provisions whereof read as under:

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 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;

2(aa) an order awarding interest or penalty under Section 4-A;]

(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 sub-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:

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.]

(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 shall be applicable to appeals under this Section.”

It is not in dispute that the Act has made provisions to entertain the appeal only on payment/deposit of compensation and that too on a substantial question of law.

9.3 In **K.S.Rama Rao's** case (1 supra), the facts disclose that a writ petition was filed questioning the order passed by the Commissioner in WC case on various grounds as in the present case. This court, having adverted to the provisions of Articles 226 and 227 of the Constitution of India and also after referring to the provision of Section 30 of the Act, had held that the writ petition is not maintainable in view of the fact that an efficacious alternative remedy of appeal is provided and is available under the said enactment. However, the learned counsel for the Insurance Company would submit that in the reported decision, the order of the Commissioner was one passed on merits whereas in the case on hand, the impugned order is an *ex parte* order. Let it be noted that a decree which is passed *ex parte* is as good and effective as a decree passed after contest. This view of this Court gets reinforced by the ratio in the decision of the Supreme Court in **Saroja v. Chinnusamy (D) by L.Rs.** The further contention that the right to appeal is saddled with onerous pre conditions and that as the opportunity to cross-examine AW1 was not provided, the writ petition is maintainable cannot be countenanced in view of the fact that the insurance company, having filed its counter before the learned Commissioner, did not appear before the learned Commissioner on the dates of adjournments and had taken a chance and had thus faced failure and then approached this Court without availing the statutory remedy.

9.4 In **Brij Lal's** case (2 supra), the facts disclose that the legal representatives of the deceased employee filed a WC case and that an *ex parte* order determining the compensation was passed as none appeared for the writ petitioner. Though Section 30 of the Act provided for an appeal to the High Court against the orders of the Commissioner, no appeal was preferred against the said *ex parte* order passed by the Commissioner, but, only an application for setting aside the *ex parte* order was filed before the learned Commissioner; and, after the said application was dismissed, the writ petition was filed before the High Court. In that factual background, having taken note of the fact that the Act has made provision to entertain an appeal against the orders of the Commissioner only on payment/deposit of compensation and that too on substantial question of law, the High Court of Punjab and Haryana at Chandigarh had held that the writ petition is not maintainable. The facts of the reported decision are exactly similar to the facts of the

case on hand. It is to be noted that the order passed in an interlocutory application is not an independent order and even that order is also not challenged independently by availing the remedies, which the law permits, and it was only challenged in this writ petition, wherein the order passed in the main case is also assailed. The effect of the order of dismissal passed in the interlocutory application is that the order granting compensation in the main case is maintained. Therefore, ultimately the writ petitioner/insurance company is now challenging the order in the WC case. For entertaining an appeal under Section 30 of the Act, the appellant would be required to make a pre-deposit of the entire amount awarded as compensation. Further, an appeal against the orders of the Commissioner would be entertained only when a substantial question of law is involved and otherwise not. Therefore, this Court is in respectful agreement with the view of the High Court of Punjab and Haryana at Chandigarh that if a writ petition like the present one is entertained, it would amount to anomalous results and would defeat the object of the Act.

10. Having regard to the reasons, this Court finds that the writ petition is not maintainable and is liable to be and is accordingly dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand dismissed.

M.Seetharama Murthi, J

23rd November, 2015

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Note:-

Mark L.R. Copy

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