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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REJECTED CASE NO. 946 OF 2017**

The New India Assurance Co Ltd	...Appellant
<i>Versus</i>	
Anees Ahmed Abdul Khaliq & Anr	...Respondents

Mrs Kalpana R Trivedi, *for the Appellant.*
Mr TJ Mendon, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. This Appeal is directed against an Award and Judgment dated 23rd September 2011 of the Commissioner under the Workmen's Compensation Act (now the Employees' Compensation Act).

2. Before I turn to the facts of this case, a few circumstances and developments in regard to the First Appeal itself must be noted. By the impugned order, the learned Commissioner allowed Application (WCA) No. 832/C-286 of 2007 filed by the 1st Respondent to the First Appeal. On 6th December 2012, this Court directed notice to be issued. There was a delay and it seems that by an order dated 4th October 2013, the delay was condoned subject to payment of costs of Rs. 5,000/-. These costs were not paid in time. The matter

remained in this state till 16th March 2017. On that date, MS Sonak J noted that there was no record to indicate whether these costs have been paid. He directed the filing of an Affidavit on the question of payment of costs. On 5th April 2017, the matter took a most unfortunate turn. MS Sonak J noted that the costs had not been paid. In the meantime, the Insurance Company-Appellant had obtained ad-interim orders restraining the original Claimant from enforcing the Award. That position had continued for four years. MS Sonak J recounted his order of 16th March 2017. He noted that the costs of Rs. 5,000/- were paid but that there was non-compliance since these costs were already paid after a delay of three years, not in the time stipulated by the Court. I must thereafter note for the record what is set out in paragraphs 7 to 11 of MS Sonak J's order of 5th April 2017.

"7. When the matter was called out yesterday on 4th April 2017, Ms Kalpana Trivedi, learned counsel for the appellant, submitted that the Appellant – Insurance Company is a public sector company, which is dealing with public money and therefore, the matter be viewed with leniency. The matter was adjourned today, in order to enable Ms Kalpana Trivedi to obtain instructions as to whether the Insurance Company willing to pay the enhanced costs, in case the first appeal is to be restored. Ms Kalpana Trivedi was also requested to state precisely the names of the Officers, who were responsible for complying with the earlier order dated 4 October 2013, since, such officers are also required to be made aware that they are dealing with public monies.

8. Today, when the matter is called out, Ms Trivedi refused to furnish the names of any Officers of the

Insurance Company and states that most of the Officers are transferred from one place to to other and therefore, it is not possible to furnish the name of any particular Officer or Officers. Although, there is no reason to doubt the statement of Ms Trivedi, which statement is obviously made on the basis of instructions imparted to her by some Officers of the Insurance Company, it must be noted that such approach on the part of the Insurance Company, is quite unfortunate. On one hand, the appellant seeks for indulgence, on the basis that it is dealing with public money and on the other hand, its Officers appear to be completely oblivious of this circumstance. Even a simple request that the name of persons, who is responsible for such non-payment of costs is being withheld, no doubt, by some other Officers of the Insurance Company.

9. In the aforesaid circumstances, the appellant is granted liberty to deposit/pay further costs of Rs. 25,000/- within a period of two weeks from today. The appellant may deposit such costs in the Court within a period of two weeks from today. The amount of such costs shall, in the first instance, be recovered from the salary of Chief Regional Manager, New India Assurance Company Ltd., Vile Parle Branch. The Chief Regional Manager shall order an enquiry and fix the responsibility upon the precise Officer or Officers, who are responsible for not complying with the order of this Court dated 4 October 2013 and thereafter the Chief Regional Manager shall recover such amount from such Officer/Officers. The compliance report to be filed before this Court within a period of six weeks from today.

10. In case the amount of costs are not deposited within a period of two weeks from today, the first appeal shall stand dismissed without any further reference to the court. Notwithstanding the dismissal of the appeal, the

Chief Regional Manager is directed to conduct an enquiry into the matter and file compliance report within six weeks from today. This is because on account of *prima facie* negligence on the part of the Insurance Company, it is possible that the Insurance Company, which is dealing with public monies, suffers a loss.

11. Copy of this order is forwarded to the Board of Directors of the appellant-Insurance Company for necessary action."

3. I note all of this because yesterday when the matter was before me I noticed that the additional costs of Rs. 25,000/- had not been paid. I gave Mrs Trivedi time only till this morning to effect that payment. She has this morning brought a cheque of Rs. 25,000/- in favour of the Registrar. That will be deposited in the course of the day and Mr Mendon will be at liberty to withdraw it immediately without security. Mrs Trivedi also has a second cheque in the amount of Rs. 5,000/-. This is not required to be deposited since the previous costs of Rs. 5,000/- have already been paid to Mr Mendon. This cheque of Rs. 5,000/- is returned to Mrs Trivedi.

4. It is in these circumstances that an application is now made, or more accurately renewed, for restoration of the Appeal.

5. I indicated to Mrs Trivedi that I would restore the Appeal on condition that she agreed to proceed with the final hearing itself immediately. I did so because I see no purpose in keeping the Appeal pending. There has already been far too much delay. In fairness Mrs Trivedi agreed.

6. The Appeal is restored to file. I have heard Mrs Trivedi for the Appellant-Insurance Company and Mr Mendon for the 1st Respondent.

7. These are the facts. The 1st Respondent, Anees Ahmed Abdul Khaliq, was the original Applicant and Claimant before the Commissioner. He filed a claim under Section 22 of the Act claiming compensation of Rs. 5,22,622/- and interest. He said that on 30th May 2007 he was in the employment of one Zeeuaul Mustafa Ibrahim, opposite Party No. 1. He was employed as a driver. He was, on the date in question, driving a motor tanker No. MH-04-CA-2757. On the date of the accident, the brakes of the vehicle failed. The tanker broke down on the road while proceeding towards Bhiwandi from Ratnagiri on the Mumbai-Goa road. The accident occurred at or near Village Nivali in Ratnagiri District. Khaliq suffered injuries to his head, left leg and other parts of his body. He said he was unable to work as a driver and sought 100% compensation for the disability.

8. Ibrahim, his employer, appeared and filed a Written Statement. In this, and this is of some significance to the Appeal, Ibrahim admitted the employer-employee relationship between himself and Khaliq. He also accepted in his written statement and pleadings that the accident occurred during the course of employment of the Claimant. He confirmed that Khaliq's salary was Rs. 5,000/- per month at that time. There is no dispute that the vehicle was insured with the present Appellant.

9. The Insurance Company also appeared. Its principal defence was that the relationship between employer and employee was not established. This is noted in paragraph 4 of the impugned order. There was no dispute about the Policy itself.

10. Khaliq examined himself. He reiterated his claim. He relied on various documents such as station diary, panchanama and so on. Even before me today there is no dispute that there was such an accident or that Khaliq suffered injuries in that accident. There is no dispute either about the accident or those of injuries. He deposed in his examination-in-chief that he was employed by Ibrahim. This is also born out from the police documents, i.e., station diary and the panchanama. Ibrahim, his employer did not dispute this and in paragraph 8 it was on this basis that the learned Commissioner came to the conclusion unhesitatingly that the Appellant proved that he was a workman.

11. Khaliq then went on to prove his age and the injuries suffered. Before the Commissioner, the Appellant also examined a medical professional, one Dr Joshi at Exhibit "U-7". He said the permanent partial disability is at 75% and confirmed that Khaliq would not be able to work as a driver in future as the disability was incurable being neurological in nature. The deposition of the doctor was accepted and the Commissioner held, in my view correctly, that there was a 100% loss of earning capacity.

12. Ibrahim led no evidence. He did not cross-examine the Applicant; he had not need to. The Insurance Company did.

13. Before me today, the two grounds canvassed by Mrs Trivedi are that the employer-employee relationship is “not proved”; and secondly, that the employer Ibrahim did not file a claim with the Insurance Company.

14. As to the first ground, in my view, it is entirely without substance. Mrs Trivedi’s submission that merely by filing a written statement an employer cannot “prove” the employment of the Applicant is a submission that needs only to be stated to be rejected. Indeed, if there was one person who could dispute the relationship of employer and employee, it was the employer Ibrahim himself. He did not do so. He candidly admitted the existence of that relationship in his written statement. In a claim filed by Khaliq and to which Ibrahim was arrayed as an opponent, it was open to Ibrahim — and to him alone — to dispute the relationship. If he chose not to do so, and on the contrary admitted it, then that fact is proved. It is not a fact that required any further evidence or proof. Mrs Trivedi says that more evidence in the form of a register, wage record, muster roll, or some other document ought to have been led. This is not always necessary. The employer was an individual and not a company; he may or may not have had any such record. What he did produce before the Court was a certificate confirming the employment, the period of employment and salary. This is noted in paragraph 9 of the impugned judgment.

15. The next submission that a claim ought to have been filed by the employer in regard to the accident is also not one that is fatal to a case such as this. Indeed, I find no mention in the impugned order of this ground ever having been canvassed before the learned

Commissioner and I think it would be exceedingly difficult to reverse the decision of the Commissioner on a ground never taken before him.

16. Mr Mendon is, in my view, completely correct in relying upon the provisions of Section 30 of the Act:

"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 lump sum;

(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 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 (36 of 1963), shall be applicable to appeals under this section."

(Emphasis added)

17. While it is correct that an Appeal is maintainable, the proviso to sub-section (1) tells us that no Appeal lies unless there is a substantial question of law involved and in the case of an order other than an order such as referred in clause (b), unless the amount is not less than three hundred rupees.

18. This is special class of First Appeal. If I was to admit it, I would necessarily, having regard to the wording of the proviso, have

to at least indicate with some precision the substantial question of law involved in the Appeal. I can find none. The entire argument is based only on facts and particularly on the question of fact of whether or not the relationship of employer-employee is proved. As I noted, the employer accepted the relationship and the learned Commissioner correctly proceeded on the basis that the relationship was proved.

19. There is no substance in the Appeal. It is dismissed. There will be no further order as to costs.

20. The amount deposited with accrued interest and lump sum penalty may be withdrawn by the 1st Respondent.

21. All concerned to act on an authenticated copy of this order.

22. First Appeal to be got numbered for record-keeping and statistical purposes.

(G. S. PATEL, J)