IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2915 OF 2018
IN
FIRST APPEAL (ST.) NO. 20981 OF 2018

M/s. Deep Sea Shipping and Manning Services Pvt. Ltd. Morya Land Mark-II, 401, New Link Road, Opp. Infinity Mall, Andheri (W), Mumbai – 400 053.	]]]]]	**... Applicant.**

In the matter of

M/s. Deep Sea Shipping and Manning Services Pvt. Ltd. Morya Land Mark-II, 401, New Link Road, Opp. Infinity Mall, Andheri (W), Mumbai – 400 053.	]]]]]	**... Appellant.**

Versus

1. Manu Mamachan Bahurasanam Kinnsyumukhy, Manalil, P.O. Punaloor, Kollam, Kerala - 691312	]]]]	
2. M/s. Kish Shipping Lines Manning Company No.37 Aseaman Tower, Cross Road of Shahid Lavasani (Farmanich), Junction Pasdasan AVG, Tehran, Iran, P.O. Box No. 19395-311	]]]]]]]	
3. Moallem Insurance Company Pvt. Ltd. 56, Shahid Hagham St. Tehram, Iran, P.O.Box No.19395/6314	]]]	**... Respondents.**

- Mr.S.C. Naidu a/w. Mr.T.R. Yadav and Mr.Aniketh Poojari i/b. Mr.C.R. Naidu for the Applicant/Appellant.
- Mr.B.K. Ashok i/b. Bekay Legal for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 12th SEPTEMBER, 2018.

PRONOUNCED ON : 4th OCTOBER, 2018.

ORDER :

1] This Application is preferred by the Appellant seeking permission to deposit the sum of Rs.10,41,168/- being the maximum amount of compensation payable under *The Employee's Compensation Act, 1923 (fort short, 'the Act')* and on deposit of such amount to dispense with the production of Certificate of Deposit from the Office of the Commissioner for Employees Compensation, Mumbai, for registration of the First Appeal.

2] The present Appeal arises as a result of the order dated 4th July, 2018, passed by the 6th Labour Court, Mumbai in Application (ECA) No.583/C-141/14. As per the said order, the Appellant is directed to pay the compensation of US Dollar 89,100/- to the Respondent-Claimant. The Applicant has preferred this appeal under Section 30(1)(a) of the Employee's Compensation Act, 1923, challenging the said order.

3] It is submitted by learned counsel for the Appellant that, though as per Section 30 of the said Act, no appeal by an employer shall lie, unless Memo of Appeal is accompanied with the Certificate by the Commissioner to the effect that the Appellant has deposited with him the amount payable under the order appealed against, the impugned order passed by the Commissioner directing the Appellant to pay the compensation amount of US Dollar 89,100/- is not only onerous but it is also beyond jurisdiction of the Commissioner to pass such order. Hence, directing the Appellant to comply with the statutory mandate of depositing the amount of compensation as awarded by the Commissioner, as a condition precedent, for registration of the Appeal is as good as depriving the Appellant from the statutory right of the Appeal.

4] It is submitted that, in view of the law laid down by this Court in the case of *B.T. Shipping London Ltd. and Others Vs. Arati Narayan and Others*[1], the Commissioner cannot award an amount beyond the amount of the compensation prescribed under the said Act. The maximum amount of compensation which Respondent No.1 is

1 2000 (2) Mh.L.J. 832

entitled to get, even assuming that he has sustained 100% loss of earning capacity, is only the amount of Rs.10,41,168/- under the said Act. Hence, the impugned order awarding US Dollar 89,100/- is way beyond the amount of compensation, which the Commissioner can award in terms of the said Act. Therefore, calling upon the Appellant to deposit the said amount would be against the law. It is a condition which the Appellant cannot comply with. Therefore, his substantive remedy of Appeal would be rendered nugatory by this procedural provision of deposit of the amount awarded by the Commissioner, before registration of the Appeal.

5] Secondly, it is submitted that, as per the decision of the Hon'ble Apex Court in the case of *Punjab National Bank Vs. Indian Bank*[2]*,* a decree in foreign currency requires permission to be obtained under *Foreign Exchange Regulation Act (for short, "FERA")* and in absence of specific prayer made in the plaint, for decree in foreign currency, no such decree can be granted. It is submitted that the Employee's Compensation Act also does not contemplate payment of compensation in foreign currency. The maximum amount payable as compensation under the said Act is regulated and the Appellant is ready to deposit such maximum sum of Rs.10,41,168/- and hence, the

2 AIR 2003 SC 2284

condition of depositing the entire amount, as awarded by the Commissioner that too in foreign currency needs to be dispensed with for registration of this appeal.

6] Further it is submitted that, the Respondent No.1 has, in the application claimed the amount of Rs.22,00,000/-, whereas in the summons, the claim shown is Rs.15,89,082/-. The Commissioner has passed the order of directing the payment of US Dollar 89,100/-. The aforesaid order is therefore incapable of compliance, in view of the fact that the date of exchange and/or the reason for granting the compensation amount in foreign currency when parties are Indian; the original claim is made in Indian Rupees and the Act also contemplates the award of compensation in Indian Rupees. Hence, on this count also, it is submitted that this application for permitting the Appellant to deposit the maximum amount of Rs.10,41,168/-, which can be payable under the provisions of the said Act, needs to be allowed for registration of this Appeal.

7] This Application is resisted by learned counsel for the Respondent-Claimant by submitting that the condition of deposit of the entire amount, as awarded by the Commissioner towards compensation is mandatory in nature, in view of the provision of

Section 30(1) of the Employee's Compensation Act. Hence, such condition cannot be dispensed with; especially when the Commissioner has held the Respondent-Claimant entitled for the said amount. Secondly, it is submitted that as per the I.T.F. Agreement, the wages/salary of the Respondent No.1 were to be paid in US Dollars. In terms of the said Agreement, therefore, the Commissioner has rightly passed the order, directing the Appellant to pay the compensation of US Dollar 89,100/-. According to learned counsel for the Respondent, this Application, therefore is not tenable and hence, liable to be dismissed.

8] In my considered opinion, the question of law as to, whether under the Employee's Compensation Act, the Commissioner is having the jurisdiction to award the compensation amount, in excess of his power, under Section 22-A, exceeding the compensation prescribed under the Act, is no more *res-integra.* In the judgment of this Court, in the case of *B.T. Shipping London Ltd. (supra)* the same issue was raised for consideration and it was held that *"under the said Act, the Commissioner is empowered to award compensation or order deposit of compensation, <u>as prescribed under the Act and not exceeding thereto</u>, even if the agreement in service conditions provided for it"*. In the said case also, the ITF Agreement on which the

Respondent No.1 herein has placed reliance, was relied upon to submit that the Commissioner has to award the compensation in terms of the Agreement of Service and if he has awarded so, then the employer has to deposit the said sum. However, while rejecting this contention, it was observed in paragraph 9 of the judgment that,

> *"9. .... Schedule IV under section 4 provides the factors for working out lump sum amount for compensation in case of total disablement and/or death. Obviously, in the very scheme of the Act of 1923, the Workmen's Compensation Commissioner cannot order the employer to deposit the amount which exceeds the amount prescribed under the Act. In other words the scale of compensation set out in Schedule IV under section 4 is the compensation that can be awarded by the Commissioner under the Act and not beyond it."*

9] Admittedly in this case, assuming that the injury sustained by Respondent No.1 has resulted into his 100% disability, even then considering the monthly wages of the Respondent as Rs.8,000/-, in view of the Government Notification under Section 4(1)(b) of the said Act dated 31st May, 2010, 60% of the amount of Rs.8,000/- is Rs.4,800/-. As per Schedule IV, the relevant factor specified is 216.91. The maximum compensation, therefore which could be awarded to the

Respondent No.1 under the said Act is Rs.4,800/- X 216.91 = Rs.10,41,168/-. Therefore, the order or Award passed by the Commissioner directing payment of 89,100/- in US Dollars is in excess of the sum of Rs.10,41,168/- and hence, it is for a larger amount than the one, which the Commissioner can award in terms of the said Act. As held in the above said judgment of *B.T. Shipping London Ltd. (supra)* ,

> *"the objective of the Act is to ensure that in case of injury or permanent disablement or death of a workman by accident out of and in the course of employment, his employer pays him compensation in accordance with the provisions contained in the Workmen's Compensation Act and such employee who has suffered injuries or permanent disablement or the dependents of the deceased employee are not left high and dry. Therefore, the compensation that can be awarded by the Workmen's Compensation Commissioner has to be in accordance with the compensation prescribed under the Act of 1923 and not exceeding thereto".*

10] It was held that the adequacy of the amount of compensation has to be seen by the Commissioner to the extent and in the light of the compensation, prescribed under the Act and not beyond it.

11] In the said case, when reliance was placed on Section 17 and 19(2) of the said Act by learned counsel for the Respondent/Claimant to urge that it is open to the employer to enter into an agreement for the compensation exceeding the amount of compensation provided under the Act and in the service conditions there was an agreement to that effect, it was held that, "Section 17 and 19(2) which have been relied upon by the counsel cannot be of any help". It was held that, "it is open to the claimants to enforce their claim, as per the agreement in the service conditions, in accordance with law but it cannot empower the Commissioner to award or order for deposit of compensation of that amount which exceeds the compensation prescribed under the Act". It was further held that Section 19(2) of the Act only provides that no Civil Court shall have jurisdiction to settle, decide or dealt with any question which is by or under the Act required to be settled, decided or dealt with by the Commissioner or to enforce any liability incurred under this Act. As regards the clause in the service conditions, whereby the employer has undertaken to provide over the amount of compensation prescribed under the Act, it was held that, the said condition can be enforced through the Civil Court and the jurisdiction of the Civil Court to that extent cannot be said to be barred under Section 19(2) of the

Act. So far as the Employee's Compensation Act of 1923 was concerned, it was categorically reaffirmed that, the Commissioner is only empowered to award compensation or order to deposit of compensation, as prescribed under the Act and not exceeding thereto.

12] In view of the clinching pronouncement of this Court, it has to be held, in this case also, that the order passed by the Commissioner granting the award in terms of the service conditions, for the amount of US Dollar 89,100/- is way beyond the compensation which the Commissioner could have awarded in terms of the Act and which was maximum to the tune of Rs.10,41,168/- only. Hence, directing the Appellant to deposit the entire amount of compensation, as awarded by the Commissioner, would be against the legal position crystallized so far and it would be also defeating the statutory right of the Appellant to challenge the said order, by filing the appeal in this Court. Hence, there is much substance in the submission advanced by learned counsel for the Appellant. As rightly submitted by him, law cannot be construed in a harsh way to such employer, who bonafide, without intending to avoid liability under the Act, offers to deposit the compensation, which he is liable to pay under the provisions of the said Act. The Appellant herein has bonafide come before the Court, showing his readiness and willingness to deposit the amount of

Rs.10,41,168/- which is the maximum amount he is liable to pay under the provisions of the said Act. In this particular fact and legal position, calling upon him to pay the amount in US Dollars and that too to the tune of US Dollar 89,100/- is going to be a harsh order; especially when the order passed by the Commissioner *prima facie* appears to be passed beyond the jurisdiction vested in him.

13] There is also substance in the submission advanced by learned counsel for the Appellant that the award passed by the Commissioner of directing the payment of the amount in US Dollar is also difficult to be enforced. In the absence of permission under FERA or without specifying the rate of conversion or exchange rate, the passing of award in foreign currency like US Dollars is something, which the Appellant may not be able to comply with. Hence, calling upon the Appellant to deposit the amount of US Dollar 89,100/- as awarded by the Commissioner would be again be putting the Appellant in difficulty and thereby negating his right of appeal.

14] Therefore, having regard to the legal issues involved in the present case, for registration of the appeal, it would be sufficient compliance, if the Appellant is given permission to deposit in this Court the amount of Rs.10,41,168/-, which is the maximum amount of compensation under the Act and the condition of production of Certificate of deposit with the Commissioner, under the third Proviso to Section 30(1) of the Act is dispensed with.

15] Accordingly, this Application is allowed in above terms. On Appellant depositing the amount of Rs.10,41,168/- in this Court within the period of four weeks from today, the Appeal be registered by dispensing with the production of Certificate of deposit of entire amount of compensation before the Commissioner as required under the third Proviso to Section 30(1) of the Act.

16] Civil Application is thus allowed and disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]