

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISCELLANEOUS CIVIL APPLICATION NO. 627/2016 IN F.A.NO. 731/2012 (D)
(SHAIKH RAHIM SHAIKH YUSUF ...VERSUS... THE ORIENTAL INSURANCE CO. LTD.,
NAGPUR & ANOTHER)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.R. Charpe, counsel for the applicant.
Ms Shilpa Tapadia, counsel for the NA-1.

CORAM : NITIN W. SAMBRE, J.
DATE : DECEMBER 12, 2018.

The present applicant was the claimant in the application W.C.A. No.6 of 2007 preferred before the Commissioner under the Workmen's Compensation Act, i.e. Labour Court, Amravati.

The claim of the applicant in said application is while working as Coolie/Loader on a truck owned by the Opponent No.1, he suffered an accident. The Tribunal considered the degree of disability and the daily wages and accordingly framed issues at Exhibit 23 and awarded compensation thereby the present non-applicant nos.1 and 2 were directed to pay the same jointly and severally. The opponent no.2-Insurance Company therein preferred an appeal before this Court bearing Appeal No.734 of 2010 which came to be allowed *vide* judgment pronounced on August 6, 2015 whereby the owner of the vehicle i.e. original opponent no.1 was directed to pay the entire amount of compensation.

Review of the aforesaid judgment dated August 6, 2015 is sought by the claimant on following grounds.

(a) Under the provisions of Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923' for the sake of brevity), what was expected of the first appellate Court was to frame a question of law and put the parties to notice so that the parties could address the Court on the said issue. According

to the learned counsel, in accordance with above provision no question of law was framed in the appeal and the first appellate Court by re-appreciating the evidence, has proceeded to allow the appeal. By relying upon the judgment of this Court in the matter of *Park View Co-operative Housing Society Ltd. and Another Vs. Union of India* reported in [(2014) BCR 489] particularly paragraphs 13, 14, 15 and 17, he would urge that the non-framing of question of law amounts to denial of an opportunity of hearing and that being so the judgment passed by this Court in first appeal needs to be reviewed. He would also urge that the framing of question of law under Section 30 of the Act of 1923 is held to be mandatory.

(b) Another limb of submissions of the learned counsel for the applicant-review petitioner is that while shifting the burden to pay the compensation from the appellant-Insurance Company to that of the vehicle owner, the least that was expected was to record some reasons for the same. According to him, for making the vehicle owner alone liable to pay the compensation alone, this Court should have recorded some reason. According to him, reasons are conspicuously absent in the judgment under review.

Per contra, learned counsel for the non-applicant/original appellant would urge that the review application is not maintainable as the same is sought to be agitated contrary to the scope of review as laid down in the catena of judgments by the Apex Court. According to him, the only remedy available to the applicant is to prefer an appeal against the impugned judgment as the scope of review is very limited. She would then submit that the impugned judgment is justified on merits and this Court cannot sit in an appeal over the judgment under review.

Considered rival submissions. Upon reading the judgment under review pronounced on August 6, 2015, it is noticed that the present applicant has specifically raised an issue regarding non-framing of question of law under Section 30 of the Act of 1923

as is reflected in paragraph 6 of the judgment. So far as the said contention raised by the present applicant in paragraph 6 of the judgment under review is concerned, though the learned Judge while dealing with appeal has recorded the submission in the negative form, such scheme is contrary to Section 30 of the Act of 1923. While dealing with the case in *Park View Co-operative Housing Society Limited* (supra), this Court had an occasion to consider a *pari materia* provision, viz. Section 100 of the Code of Civil Procedure which mandates framing of question of law. In the said case, this Court has taken a view that the framing of question of law is mandatory if it is prescribed in the statute books and the purpose behind the same is to put the parties to notice to prepare and address on the said issue rather than taking them by surprise.

Admittedly, *vide* judgment under review, the learned Judge of the first appellate Court has allowed the appeal without framing any question of law though it is mandatory to frame a question of law as per Section 30 of the Act of 1923.

There is one more reason why this Court intends to invoke review jurisdiction in the present case. For shifting the burden on the applicant and exonerating the insurance company, the least that was expected of the learned Judge was to record reasons connecting the issue in question. In absence of such reasons, it is really difficult to appreciate that the judgment stands to the scrutiny of Section 30 of the Act of 1923. That being so, the judgment under review calls for an interference in exercise of the review jurisdiction as there appears to be an error apparent on the face of record of not framing a question of law as warranted by Section 30 of the Act.

The miscellaneous civil application is allowed. The judgment dated August 6, 2015 is set aside. First Appeal No.731 of 2012 is restored to file. Since the paper book is not filed, the parties to file paper book within six weeks from today. The first appeal be heard on the following substantial question of law:-

“In the wake of admitted fact that the vehicle in question was insured with the applicant, whether there was a breach of policy conditions in the given facts and circumstances of the case, particularly when it is claimed that the claimant was travelling in the truck as a passenger and suffered injuries in the accident ?”

The parties are at liberty to address on any other question of law in addition to the above question of law. The appeal is of the year 2012 and the same will be peremptorily called on 29.01.2019 with an understanding that no further adjournment would be granted in the matter.

The miscellaneous civil application is disposed of accordingly.

(NITIN W. SAMBRE, J.)