

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.375 of 2022

***Divisional Manager (Legal), M/s. New
India Assurance Company Ltd.***

.... ***Appellant***

Mr. M. Sinha, Advocate

-versus-

Kartika Jena and Others

.... ***Respondents***

Mr. K.K. Das, counsel for Respondents 1 and 2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
20.12.2022

Order No.

- 03.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. M. Sinha, learned counsel for the insurer – Appellant and Mr. K.K. Das, learned counsel for claimant – Respondents 1 and 2.
 3. Present appeal by the insurer is directed against the impugned judgment dated 14th July, 2022 of learned Commissioner for Employee's Compensation-cum-Joint Labour Commissioner, Cuttack passed in E.C. Case No.190-D of 2016, wherein compensation to the tune of Rs.8,31,920/- along with interest has been granted on account of death of deceased Chandan Jena arising out of and in course of his employment as helper in the truck bearing registration number OR 05W 9376.
 4. Mr. Das, learned counsel raises his preliminary objection against maintainability of the appeal on the ground of non-compliance of the proviso to Section 30(1) of the Employee's Compensation Act,

1923 (hereinafter referred as 'the EC Act'). In support of his contention he relies on the decision of this court rendered by the Larger Bench in Misc. Appeal No.1191 of 1999, decided on 22nd July, 2011 (The Divisional Manager, M/s. New India Assurance Co. Ltd. v. Bichitrananda Jena @ Bichitra Rao).

5. In the aforesaid case of three Judge Bench of this court dismissed the appeal by holding that the appellant has neither deposited the statutory fees either on the date of filing of the appeal or get any order to dispense with the certificate from the Commissioner towards the same.

6. Mr. Sinha in his reply submits that admittedly the appeal has been filed without deposit of the award amount before the Commissioner in terms of the requirement mentioned in the Proviso under Section 30(1) of the EC Act. But he goes to submit that the requirement of deposit of the amount is to be interpreted in the sense that the appeal shall not be taken up for consideration without depositing the required amount. In support of his submission he relies on a decision of this court in the case of ***Oriental Insurance Co. Ltd. v. Gajendra Prusty and Another, 1996 (II) OLR 79.***

Mr. Sinha further submits that the Larger Bench has not considered all prospects of the provision and the same is silent on the decision of this court rendered in the case of ***Gajendra Prusty*** (supra).

7. The reference before the Larger Bench in MA No.1191 of 1999 was as follows:-

“In the aforesaid view of the matter, there being two views on the field rendered by two co-ordinate Division

Benches of the Court and the later judgment as discussed earlier has been rendered without noticing the former, I feel the matter should be resolved and set at rest by a larger Bench.”

The Larger Bench relying on a decision of the Hon’ble Supreme Court in the case of *Ved Prakash Garg v. Premi Devi and Ors.*, **AIR 1997 SC 3854**, have observed as follows:-

“4. In this view of the matter, the question referred to this Bench is answered against the appellant. As per third proviso to Section 30 no shall appeal lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited statutory deposit with him under the order appealed against. Admittedly, the appellant has not deposited the statutory fees either on the date of filing the appeal or got an order to dispense with the certificate from the Commissioner towards the same. Therefore, the appeal is liable to be dismissed and accordingly dismissed without referring back to the learned Single Judge for this purpose keeping in view that this Appeal is pending for the last 12 years and this Bench has got power to pass an order in this Appeal after answering the order or reference against the appellant. Since this matter is very old, it would be just and proper to give a direction to the Insurance Company to deposit the awarded amount with interest before the Workmen’s Compensation Act-cum-Deputy Labour Commissioner,

Cuttack within two weeks from today and thereafter the Workmen's Compensation Commissioner shall disburse the same to the claimants.”

8. In view of the observations made by the Larger Bench that the appeal has to be accompanied either with the receipt of deposit of the required amount as per the proviso to Section 30 or with an application to dispense with the same, it is seen in the instant case that the appeal has been filed on 27th September, 2022 and as per the deposit receipt filed, the required amount was deposited on 2nd November, 2022. It also remains an admitted fact that no application for dispensing with such statutory amount was accompanied to the appeal or filed till date. As such the appeal is found not entertainable for non-compliance of required provisions provided under Section 30(1) of the EC Act.

9. It is needless to say that in view of the decision rendered by the Larger Bench the decision of the Division Bench in the case of **Gajendra Prusty** (supra) would not prevail over.

10. In the result the appeal is dismissed being not entertained.

11. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge