2025 INSC 1239

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 10482 /2017

ALOK KUMAR GHOSH Appellant

VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD & ANR. Respondent(s)

O R D E R

1. Heard learned counsel for the parties.

2. The present appeal arises from an order of the High Court at Calcutta[1] dated 09.04.2015 whereby the appeal of the first respondent (insurer - the insurance company) was allowed in part and the order of the Commissioner, Workmen's Compensation (1st Court), West Bengal[2] dated 04.03.2011, in Claim Case No. 12/2006, was modified to the extent that direction to the insurer (the first respondent) to pay the compensation to the workman (the second respondent) was substituted with a direction to the appellant (insured - employer) to pay the compensation and seek reimbursement from the insurer.

[1] High Court
[2] Commissioner

However, while doing so, the order of the Commissioner awarding compensation of Rs. 2,58,336 with statutory interest of 12% per annum to the workman was affirmed.

3. **Record reflects that the second respondent, employed as driver of the appellant, made a claim, under the Workmen's Compensation Act, 1923[3] (now known as Employee's Compensation Act, 1923), against the appellant and the first respondent for compensation, by alleging, *inter alia,* that claimant suffered a disabling injury by accident arising out of and in the course of employment. Based on the pleadings of the parties, Commissioner framed multiple issues for consideration. One of them, namely, issue no.4, being as to whether insurance company is liable to pay compensation. The said issue was decided against the insurance company upon finding that the risk was covered under the certificate of insurance issued by the first respondent to the appellant.**

4. **Against the order of the Commissioner, the**

[3] 1923 Act

insurance company (the first respondent herein) filed an appeal before the High Court on a technical ground that the award should have been against the employer (i.e., the appellant herein) with liberty to the employer to seek reimbursement from the insurer under the contract of insurance.

5. High Court accepted the aforesaid plea and, accordingly, modified the order of the Commissioner in terms *supra*.

6. Aggrieved by the order of the High Court, the employer is in appeal before us.

7. The submission on behalf of the appellant is that there is no dispute regarding the claim being covered by the contract of insurance. Further, there is no dispute regarding appellant's right of reimbursement; and there is no challenge to the amount of compensation awarded. In such circumstances, there was absolutely no justification for the High Court to modify the award in the aforesaid terms. Additionally, it has been argued that the High Court erroneously brushed aside the decision of this Court in *Mahendra Rai vs.*

United India Insurance Company Ltd. & Anr. (Civil Appeal No.6697 of 2014, decided on July 23, 2014), **where a similar plea raised on behalf of the insurance company was rejected.**

8. **Per contra, the learned counsel for the first respondent (insurance company) supported the decision of the High Court by submitting, *inter alia*, that the 1923 Act imposes liability on the employer; and there is no provision therein for compulsory insurance or fastening liability on the insurer to satisfy judgment and awards against persons insured, as is there in Section 149 of Motor Vehicles Act, 1988. Hence, rights of insured and insurer are governed by the contract of insurance, which is to indemnify the insured, and therefore, the claimant would have no right to directly claim compensation from the insurer. As a result, the appropriate course for the Commissioner is to award compensation against the employer only, who may seek reimbursement from the insurer in terms of the contract of insurance. In support of his**

submissions, decisions of this Court in *New India Assurance Co. Ltd. v. Harshadbhai Amrutbhai Modhiya & Anr*[4]; *P. J. Narayan v. Union of India*[5]; and *Gottumukkala Appala Narasimha Raju and others v. National Insurance Co. Ltd.*[6] have been cited. It has also been argued that the decision in *Mahendra Rai (supra)* is *per incuriam* as it overlooked the statutory scheme of the 1923 Act as well as earlier decisions of this Court interpreting the statutory provisions.

9. We have considered the rival submissions and have perused the record. In our view, the short question that arises for our consideration is:

> **Whether in a proceeding initiated under the 1923 Act for compensation payable under the said Act, insurer could be made a party respondent? If yes, whether compensation can be awarded against it if otherwise admissible under the contract of insurance?**

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[4] (2006) 5 SCC 192
[5] (2006) 5 SCC 200
[6] (2007) 13 SCC 446

10. **The aforesaid issue is no longer *res integra* as it stands answered by this Court in *Gottumukkala Appala Narasimha Raju* (supra). The question that fell for consideration in *Gottumukkala Appala Narasimha Raju* (supra) was whether there could be no award against the insurer in a proceeding under the 1923 Act. There a claim under the 1923 Act was made against the tactor owner on death of a tractor driver by impleading the insurer with whom the tractor was insured. The Commissioner awarded compensation holding the owner and insurer jointly and severally liable. An appeal was preferred before the High Court which held that no award could be passed against the insurer by the Commissioner. On appeal to this Court, though this Court did not disturb the decision upon finding that the deceased was the husband of the tractor owner and there existed no employer and employee relationship between them, it was held:**

> **"21. Thus, if the vehicle is covered by an insurance, the insurer may be made a party and it may be liable to indemnify**

the owner, but the situation in this case is entirely different, as would appear from the discussions made hereinafter."

11. Section 19 of the 1923 Act, which was considered in the aforesaid decision, provides as follows:

> **Section 19. Reference to Commissioners.- (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation including any question as to whether a person injured is or is not an employee or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.**
>
> **(2) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.**

12. By relying on Section 19, in *Gottumukkala Appala Narasimha Raju* (supra), it was held:

> **"26. Our attention has been drawn to some decisions of the High Courts which have taken different views in regard to the liability of the insurer to be joined as a party in a proceeding under the 1923 Act. It is not necessary for us to go into the correctness or otherwise of the said decisions, as in our opinion, there does not exist any bar in the 1923 Act in this behalf. Section 19 of the 1923 Act specifically provides that any question in regard to the liability of a person who is required to indemnify the employer**

must be determined in the proceeding under the said Act and not by way of a separate suit. Thus, a question of this nature should be gone into the proceeding under the 1923 Act."

(Emphasis supplied)

13. In our view, the aforesaid decision settles the issue. Otherwise also, Section 19 of the 1923 Act is clear. It enables the Commissioner to determine as to who would be liable to pay the compensation and, therefore, it can determine the liability of an insurer. This we say so, because the 1923 Act is a social welfare legislation. The object of the Act is not merely to provide compensation but also to provide a speedy and efficacious remedy to a workman/ employee, or his or her dependent, to realize compensation for injury, or death, suffered by accident arising out of and in the course of his or her employment. No doubt, Section 3 of the 1923 Act fixes liability to pay compensation on an employer but where the liability of an employer is covered by a contract of insurance, exclusion of the insurer from being jointly and severally liable for payment of the

compensation awarded would have deleterious effect on the very purpose which the legislation seeks to achieve and would render the remedy illusory. This we say so, because if we hold that the insurer would be liable only to reimburse the employer, in the event employer fails to make payment for any reason whatsoever, including financial incapacity, question of reimbursement would not arise and the workman /employee, for whose benefit legislation has been made, would be left high and dry. In our view, therefore, notwithstanding absence of a provision such as Section 149 of Motor Vehicles Act, 1988 in the 1923 Act, by virtue of power to determine liability under Section 19, the Commissioner would have power to make the insurer jointly and severally liable with the employer to pay compensation if the same falls within the scope of the contract of insurance.

14. A similar issue arose before this Court in *Mahendra Rai* (supra). There, on behalf of the insurance company, a similar plea was raised, which was rejected while observing as under:

> **"The learned Counsel for the Insurance Company submitted that the Commissioner has no jurisdiction under the Act to direct the Insurance Company to pay the compensation; it is the owner who is liable to pay. However, such submission cannot be accepted in view of the fact that the vehicle is insured with the insurance company and that without giving any reason the High Court held that the Insurance Company at the first instance had no liability to meet the award of compensation and doubted the maintainability of the order passed by the Commissioner. We are of the view that after such observations already made the remand of the case will be futile. In fact, we find no error in the order passed by the Commissioner under the Workmen's Compensation Act, 1923."**

15. Now, we shall consider the decisions cited by the learned counsel for the first respondent. In *Harshadbhai Amrutbhai Modhiya* (supra), the issue was whether interest is payable by an insurer while indemnifying the insured for the amount of compensation awarded against him under the 1923 Act. In that context, it was held by this Court that under the provisions of the 1923 Act the insurer is not statutorily liable as is the case under the Motor Vehicles Act. However, where a contract of insurance is entered into by and between the employer and the insurer, the insurer

would be liable to indemnify the employer. It was also held that as there is no statutory liability on the insurer, it is open to the Insurance Company to refuse to insure.

16. In the instant case, there is no dispute that the insurer has undertaken the liability to indemnify the insured (i.e., the employer) and has not contracted out of his liability. In such circumstances, in our view, the aforesaid decision is of no help to the first respondent.

17. In *J.P. Narayan* (supra), this Court dismissed a writ petition seeking a direction upon Insurance Companies to delete the clause in the Insurance Policy which provided that in cases of compensation under the 1923 Act, the Insurance Company will not be liable to pay interest. While dismissing the writ petition, this Court held that in absence of statutory liability, it is a matter of contract between the Insurance Company and the insured and, therefore, it is always open to the Insurance Company to refuse to insure. In our view, this decision is of no help to the first

respondent as no plea has been set up that the insurer is not liable to reimburse the interest amount payable under the claim. In fact, the first respondent has not even brought the insurance policy on record. Besides that, there is no finding of the Commissioner or the High Court that the insurance contract excluded liability to pay interest.

18. In view of the discussion above, in our view, there was no justification for the High Court to modify the order of the Commissioner and shift liability on the employer (the appellant) alone. Rather, the appropriate course would have been to make the employer and the insurer jointly and severally liable. However, as we are informed that the amount awarded by the Commissioner has already been deposited by the insurance company (the first respondent) in terms of the award, we do not deem it necessary to modify the award passed by the Commissioner. Consequently, the appeal is entitled to be allowed and the award of the Commissioner restored.

19. **Before parting, we must express our anguish at the practice of Insurance Companies unnecessarily filing appeals by raising technical pleas more so when they do not deny their ultimate liability under the contract of insurance. As the first respondent unnecessarily filed an appeal before the High Court and for this reason compensation could not be timely released in favour of the second respondent, we deem it appropriate to compensate the second respondent with costs of Rs.50,000 to be paid by the first respondent. In our view, the High Court also adopted a hyper technical approach and overlooked the provisions of Section 19 of the 1923 Act while modifying the award passed by the Commissioner to the disadvantage of the employee (i.e., the claimant) when there was no dispute regarding the liability of the insurance company under the contract of insurance.**

20. **We, accordingly, allow the appeal and set aside the order passed by the High Court and restore the award of the Commissioner with a**

direction that the amount deposited by the insurance company shall be released in favour of the workman (the second respondent) in terms of the award passed by the Commissioner. If the amount so deposited has earned interest, the interest accrued thereon shall also be released in favour of the second respondent along with the principal within a period of one month from the date this order is produced before the court/ authority concerned. Costs of Rs.50,000 shall also be paid by the first respondent to the second respondent within the same period. If the compensation amount has not been deposited or some amount remains to be deposited, the same shall be recovered in terms of Commissioner's award.

21. Pending applications, if any, shall also stand disposed of.

.....J
[MANOJ MISRA]

.....J
[NONGMEIKAPAM KOTISWAR SINGH]

New Delhi
October 09, 2025

ITEM NO.124 COURT NO.15 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10482/2017

ALOK KUMAR GHOSH Appellant(s)

VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD & ANR. Respondent(s)

Date : 09-10-2025 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) :
Mr. Anand, Adv.
Mr. Abhijit Sengupta, AOR
Mr. Muddam Thirupathi Reddy, Adv.
Mr. Paras Chauhan, Adv.
Mr. N.maylsamy, Adv.
Mr. Deepak Bahl, Adv.

For Respondent(s) : Ms. Sakshi Mittal, AOR
Mr S L Gupta, Adv.
Mr Asutosh Sharma, Adv.
Mr Swathana Bhaarath, Adv.
Ms Gunjan Sharma, Adv.
Ms Neeta, Adv.
Mr Sanjeev Kumar, Adv.

Ms. Rajeshri Nivuratirao Reddy, AOR
Ms. Shivani Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The civil appeal is allowed in terms of the signed order which is placed on the file.

2. Pending application(s), if any, shall stand disposed of.

(CHETAN ARORA) (CHETNA BALOONI)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)