

**SUPREME COURT OF INDIA**

Mohd. Anwar

Vs.

The Oriental Insurance Company Ltd.

C.A.No.2265-2266 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

19.02.2018

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(C)No.27440-27441 of 2017

1. Leave granted.

2. These appeals arise from the final judgment and order dated 22.08.2017 passed by the High Court of Delhi at New Delhi in FAO No.424 of 2016 whereby the Single Judge of the High Court allowed the appeal filed by respondent No.1 herein and set aside the order dated 06.05.2016 passed by the Employees' Compensation Commissioner, Delhi by which the Commissioner partly allowed the claim petition filed by the appellant herein. By order dated 11.09.2017, the High Court also dismissed the application bearing C.M. No.32982 of 2017 in FAO 424/2016 filed by the appellant herein for setting aside the judgment dated 22.08.2017.

3. These appeals involve a short point. Few facts need mention infra to appreciate the point. Facts are taken from the list of dates and SLP.

4. The appellant herein is the claimant. He was under the employment of respondent No.2 [M/s Swati (sic. Swasti) Structure & Concretes], a company, on the post of Driver. He used to drive TATA Tipper vehicle bearing No.UK 08V 4577.

5. On 08.03.2013, the appellant (claimant), while on duty, met with an accident and sustained injuries on his body. The aforesaid accident occurred during the course of his employment and it also arose out of employment. The case of the appellant is that the risks and rights of the parties were covered by the Insurance Policy and hence on that basis, the appellant filed a claim petition under the Employees Compensation Act, 1923 before the Employees Compensation Commissioner at Delhi seeking compensation from his employer (respondent No.2) and Insurer (respondent No.1) for the injuries sustained by him in the accident.

6. The claim petition was contested by respondent No.2 (employer) and the Insurance Company (respondent No. 1 herein) on various grounds on facts and the law. One of the objections raised by respondent No.1 was in relation to the territorial jurisdiction of the Court in filing the claim petition by the claimant.

7. By order dated 06.05.2016 (Annexure-P-7), the claim petition was allowed in part by the Commissioner against both the respondents herein and accordingly an award was passed against both the respondents for a total sum of Rs.8,70,576/- by way of compensation for the injuries sustained by the appellants (claimants).

8. Felt aggrieved by order dated 06.05.2016, Respondent No.1, the Insurance Company filed appeal before the High Court. By impugned judgment, the Single Judge allowed the appeal, set aside the order of the Commissioner and dismissed the claim petition on the ground of lack of territorial jurisdiction. Since the impugned judgment was passed without hearing the appellants herein (respondent No.1 before the High Court), he filed an application for setting aside the impugned judgment. By order dated 11.09.2017, the High Court dismissed the application. Aggrieved by the judgment/order dated 22.08.2017 and 11.09.2017, the appellants (claimants) felt aggrieved and filed these appeals by way of special leave in this Court.

9. Therefore, the short question, which arises for consideration in this appeal, is whether any case was made out by the Insurance Company before the High Court.

10. Heard Mr. R.K. Nain, learned counsel for the appellants and Mr. K.K. Bhat, learned counsel for respondent No. 1.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals filed by the claimants and while setting aside of the impugned judgment remand the case to the High Court for deciding the appeal filed by the Insurance company afresh in accordance with law.

12. In our opinion, the need to remand the case to the High Court has occasioned because the impugned judgment was passed by the High Court without hearing the appellants herein (who was respondent No.1 in the appeal before the High Court). Indeed, this fact was not disputed.

13. It is true that the High Court was constrained to make strong observations against the appellants (claimants) on the manner in which he prosecuted his stand in the appeal before the High Court, yet having regard to the totality of the facts and circumstances arising in the case including the nature of the claim, the several issues involved therein and the grounds raised by the Insurance Company in their appeal leveling serious allegations against the appellants (claimants) and few others which also found acceptance to the High Court, we are of the considered opinion that an opportunity of hearing, in the interest of justice, needs to be given to the appellants before the High Court to contest the appeal filed by the Insurance Company.

14. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. Impugned judgment is set aside and the case is remanded to the High Court for deciding the appeal filed by the Insurance Company afresh in accordance with law uninfluenced by any of the observations made by us because having formed an opinion to remand the case to the High Court on the ground mentioned above, we did not apply our mind to the merits of the controversy.

15. Parties to appear before the High Court on 12.03.2018 to enable it to decide the appeal expeditiously.