

Devi and ors. Vs. Prabhakar and anr.

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Court : Karnataka

Decided On : Jan-22-2004

Reported in : II(2004)ACC870; [2004(102)FLR911]; 2004(3)KarLJ397

Judge : Ram Mohan Reddy, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2, 3 and 10

Appeal No. : Miscellaneous First Appeal No. 1895 of 2002

Appellant : Devi and ors.

Respondent : Prabhakar and anr.

Advocate for Def. : Vigneshwar S. Shastry, Adv. for Respondent-1 and ;Nithin Agarwal, Adv. for Respondent-2

Advocate for Pet/Ap. : V.N. Madhava Reddy, Adv.

Judgement :

Ram Mohan Reddy, J.

1. The legal representatives of the deceased Sukumar Lengade have preferred this appeal under Section 30(1) of the Workmen's Compensation Act, 1923 (for short, the 'Act'), calling in question the legality and validity of the judgment dated 21-1-2002 passed in No. WCA/SR-9/2001 on the file of the Commissioner for

Workmen's Compensation, Belgaum (for short, the 'Commissioner').

2. Facts in brief are:

One Sukumar Lengade is said to be an employee of M/s. P.I. Angadi and Commercial Engineers, the 1st respondent herein, on a monthly salary of Rs. 8,000/-, as a Fabricator Supervisor. The 1st respondent was a recipient of a contract by the 2nd respondent for the construction of a bus depot of K.S.R.T.C. at Raibag. While Sukumar Lengade was at the construction site, at about 4.10 p.m., on 3-8-1999 the steel structure which was lifted to the roof, fell on the deceased, sustained grievous injuries and succumbed to the same on the spot. The legal representatives of the deceased being the widow and two minor children got issued a legal notice dated 13-11-2000, through their Counsel, calling upon the proprietor P.I. Angadi and Commercial Engineers as well as the Depot Manager of K.S.R.T.C., Raibag, the respondents 1 and 2 herein, respectively, demanding the payment of Rs. 1,50,000/- as compensation together with interest at 8% per annum. The respondents having failed to make the payment, the legal representatives of the deceased were compelled to file an application before the Commissioner for compensation, which was numbered as WCA/SR-9/2001. The respondents, on notice, entered appearance and filed their statement of objections resisting the claim.

3. The Commissioner, on the basis of the pleadings of the parties framed the following two issues:

1. Whether the deceased was a workman as defined under Section 2(1)(n) of the Act?

2. Whether the accident occurred during the course of employment and out of employment?

4. The 1st claimant examined herself as P.W. 1 and got marked ten documents as Exs. P. 1 to P. 10. On behalf of the respondents, 1st respondent examined himself as R.W. 1 and 2nd respondent examined one V.G. Kulkarni as R.W. 2. On behalf of 1st respondent five documents were marked as Exs. R. 1-1 to R. 1-5 and on

behalf of 2nd respondent copy of the agreement deed was marked as Ex. R. 2-1. The Commissioner considering the oral and documentary evidence placed by the parties, held that the deceased was not a workman as defined under Section 2(1)(n) of the Act and that the accident did not occur during the course of employment or out of employment and accordingly, dismissed the petition. The legal heirs of the deceased being aggrieved by the said judgment have preferred this appeal.

5. Sri V.N. Madhavareddy, learned Counsel for the appellants while assailing the findings, contends that the judgment of the Commissioner is replete with surmises, conjectures and infirmities. He would contend that the Commissioner was not justified to holding that the deceased was a sub-contractor under the 1st respondent in the absence of any written contract. He would also contend that there was no material on record to establish that the 1st claimant had received a sum of Rs. 2,60,000/- towards cost of material which formed a part of the terms of sub-contract. In addition, he would contend that the Commissioner ought not to have held that the deceased was running his own industry in the name 'Sanmathi Engineering' for construction of building and therefore, the inferential finding of the Commissioner that the deceased was a sub-contractor under the 1st respondent is wholly perverse.

6. Sri Vigneswara S. Shastri, the learned Counsel for the 1st respondent would seek to sustain the impugned judgment and would contend that the appellant had not made out any substantive legal grounds to interfere with the judgment of the Commissioner. He would point out with reference to the exhibits marked on behalf of the respondent that there was absolutely no relationship of employer and employee, between the 1st respondent and the deceased.

7. Mr. Nithin Agarwal, learned Counsel for the Corporation meekly submits that in terms of Clause 30(a) of the agreement entered into between the Corporation and the 1st respondent, as at Ex. R. 2-1, provided for payment of workmen compensation, if any, by the 1st respondent-contractor and it was for the 1st respondent to answer the claims under the Act, hence he was not the answering respondent.

8. Having heard the learned Counsels for the parties, the question for determination in this appeal is:

Whether the Commissioner was justified in holding that there existed no relationship of employer and employee between the deceased Sukumar Lengade and the 1st respondent, as the deceased was a sub-contractor under the 1st respondent, in the facts, circumstances of the case and evidence on record?

9. The fact that the 1st respondent had entered into a contract with the 2nd respondent for the construction of the bus depot at Raibag is not in controversy. The fact that the deceased Sukumar Lengade, aged about 40 years sustained grievous injuries on 3-8-1999 at about 4.10 p.m., due to the fall of a steel structure on him while erecting a steel roof at K.S.R.T.C., Raibag Depot, is not in dispute. The only controversy is that there is no relationship of employer and employee between the deceased and the 1st respondent. The plea of the 1st respondent is that the deceased was a sub-contractor under him and in the process of erecting the steel roof, the accident had occurred resulting in grievous injuries to the deceased who succumbed to the same. In support of this pleading, the 1st respondent, having examined himself as R.W. 1 placed reliance on the documents Exs. R. 1-1 and R. 1-5. R.W. 1 claims that the deceased had entered into a written contract with him by which the deceased was required to carry out a specialised job of fabrication of the roofing for the K.S.R.T.C. depot at Raibag. It is also in his evidence that the agreement entered into between the parties consisted of only one original document in the custody of the deceased and of which no copies were made. To buttress his claim, he has produced the statement of witnesses examined by the prosecution before the JMFC, Raibag, in Cri. Case No. 16 of 2000, in which R.W. 1 was accused of offence under Section 304A of the Indian Penal Code.

10. The 1st claimant examined herself and reiterated the statements set out in the claim petition. It is her specific case that the deceased was employed by the 1st respondent. She testified to the fact that while the deceased was under the employment of the 1st respondent, while discharging his duties, in the course of and out of employment had sustained grievous injuries resulting in his death.

11. Having perused the impugned judgment, the oral and documentary evidence, at the threshold itself it is noticed, that the Commissioner is not justified in holding that the deceased was a sub-contractor under the 1st respondent. The verbal assertions of R.W. 1 being self-interested testimony, not supported by any independent evidence, could not have and in fact cannot constitute substantiated legal evidence to establish the existence of a valid, legal, binding sub-contract. The burden of establishing that there existed a sub-contract between the deceased and the 1st respondent was solely on R.W. 1. The 1st respondent failed miserably in his effort to lead cogent legal evidence to establish his defence that the deceased was a sub-contractor. The fact that the deceased died out of an injury sustained while the steel roof was being erected at the construction site at Raibag not being in dispute, the Commissioner was not justified in recording a finding that the deceased was not a workman.

12. The documents Ex. R. 1-1 is said to be a letter issued by the State Bank of Mysore, addressed to the 1st respondent the contents of which are that a certain cheque was presented through the Union Bank of India, Belgaum which was honoured and paid on 3-12-1999. The certified copy of the judgment and deposition of witnesses in Cri. Case No. 16 of 2000 are together marked as Ex. R. 1-2. It is noticed from this judgment that the 1st respondent was charge-sheeted for an offence under Section 304A of the IPC for the death of Sukumar Lengade. Of course, it is true that a number of witnesses were examined however, the learned Judicial Magistrate First Class acquitted the 1st respondent of the said charges, The entreaty of the learned Counsel for the 1st respondent that mere production of Ex. R. 1-2 is sufficient to establish and prove the fact that the deceased was not an employee but was a sub-contractor under him, is, in my considered opinion, a specious plea. Mere filing of documents and marking them cannot tantamount to proof of its contents. I say so, because the statement of witnesses in the criminal case recorded by the Criminal Court are not confronted to P.W. 1 the claimant and none of the witnesses examined in the said case are examined in the case before the Commissioner, therefore, mere production and marking of the said statements and witnesses is of no legal consequence. The Commissioner was not justified in taking into consideration the statement of witnesses examined by the prosecution as at the Ex. R. 1-2 to conclude that there

was no relationship of the employer and employee between the deceased and the 1st respondent. Be that as it may, even assuming for a moment that the deceased was a partner of a firm, as contended by the Counsel for the 1st respondent, that by itself would not preclude the deceased from being an employee under the 1st respondent-Exs. R. 1-3 and R. 1-4 are photocopies of the extracts of Bank accounts of the 1st respondent. Ex. R. 1-5 is said to be a receipt, signed by the 1st claimant for having received Rs. 2,60,000/- towards fabrication work against a bill. This piece of evidence cannot by any standard prove that the deceased was a sub-contractor for carrying out fabrication work much less prove that the 1st claimant had received the payment. P.W. 1 when confronted with Ex. R. 1-5 denied the receipt, as also the signature on it, Ex. R. 1-5 remained on record without proof of its contents. Hence, reliance could not be placed on this document by the Commissioner. There is considerable force in the submission of learned Counsel for the appellant that the Commissioner recorded an inferential finding based on surmise and conjecture.

13. One another reason as to why the deceased could not be held to be a sub-contractor is well-borne out by the tender document at Ex. R. 2-1. This exhibit is said to be an agreement dated 5-2-1999 between the 1st respondent and the 2nd respondent enclosing Form 65 Schedule of contract form. Clause 26(a) of the document, extracted below, expressly prohibits sub-contract:

'The contract shall not be assigned or sublet by the contractor. However, any specific portion of the work which is of a specialised nature and normally not executable by a general contractor could be got done by the specialised agencies which are executing such works, after obtaining the specific approval of the Executive Engineer in writing in each case. Such consent to sublet, the work, if given, shall not relieve the contractor from any liability or obligation under the contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor or his agents, servants or workman as fully as if they were the acts, defaults or neglects of the contractor, his agents, servants or workman'.

14. The consequences of sub-contracting without the approval of the Executive Engineer is also set out in the said clause which may not be necessary for the

purpose of deciding this case. The liability to pay compensation under the Act is set out in Clause 30(a) of the document which reads as under:

'Clause 30(a).--The contractor shall be responsible for and shall pay any compensation to his own workmen payable under the Workmen's Compensation Act, 1923 (VIII of 1923) (hereinafter called the 'said Act') for injuries to the workman. If such compensation is paid by KS.R.T.C as principal under Sub-section (1) of Section 12 of the said Act on behalf of the contractor, it shall be recoverable by KS.R.T.C from the contractor under Sub-section (2) of the said section. Such compensation shall be recovered in the manner laid down in Clause 1 above'.

In view of the terms of the contract entered into between the 1st and 2nd respondents by which sub-contract is not permitted, it is too far-fetched for the 1st respondent to claim that the deceased was in fact a sub-contractor to execute the work of fabrication. The 2nd respondent did not produce any document to show that the 1st respondent sought permission or that the Executive Engineer approved, in writing, to engage a sub-contractor to carry out fabrication work in the construction of KS.R.T.C. depot at Raibag. The written statement filed by respondent 2 also does not disclose any pleading that such written approval was granted to the 1st respondent to engage the deceased as a sub-contractor. It is not the case of the 2nd respondent that they have commenced any proceedings against the 1st respondent for having committed a breach of the said term. Keeping in mind the aforesaid terms, the scanty evidence of R.W. 1, the absence of evidence of the witnesses examined in the criminal case and absence of proof of the contents of the documents Exs. R. 1-1 to R. 1-5, it cannot be held that the deceased served the 1st respondent as a sub-contractor.

15. The laudable objective of the Act is to compensate the dependants of the victims as they may not be suddenly deprived of the source of their maintenance and as far as possible may be provided with means as were available to them before the accident took place. On a fair consideration of the material on record, the pleas of the respondents to negate the lawful claims for compensation, is not in conformity with the Act, totally lack in bona fides and require to be rejected.

16. The judgment of the Commissioner is tainted with surmises and conjectures and is more of an inferential finding which cannot be justified. The legal position cannot be disputed that mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution must be proved by admissible evidence, that is, by the evidence of those persons who can vouchsafe for the truth of the facts in issue. The situation is however different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted, and they are marked thereafter as exhibits by the Court. The finding suffers from infirmities both in law and fact and deserves to be set aside.

In the result and for the foregoing reasons, the appeal is allowed. The impugned judgment dated 21-1-2002 in No. WCA/SR-9/2001 on the file of the Commissioner for Workmen's Compensation, Belgaum, is set aside and the matter is remitted to the Commissioner to render a finding on the other issues. The accident occurred on 3-8-1999, hence, the Commissioner is directed to complete the proceedings within a period of six months from the date of receipt of this order. In the peculiar facts and circumstances of the case, parties are directed to bear their own costs.

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