

Thirthamurthy Vs. Smt. Radha

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Court : Karnataka

Decided On : Feb-20-2002

Reported in : II(2002)ACC479; 2003ACJ537; 2002(94)ELT588(Kar);
ILR2002KAR3005; 2002(4)KarLJ168

Judge : D.V. Shylendra Kumar, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2(1), 3(1), 4, 4(1), 4-A(3),
12 and 12(1); Workmen's Compensation (Amendment) Act, 1995

Appeal No. : Miscellaneous First Appeal No. 1318 of 2000

Appellant : Thirthamurthy

Respondent : Smt. Radha

Advocate for Def. : H.C. Kavitha, Adv.

Advocate for Pet/Ap. : K.T. Gurudeva Prasad, Adv.

Disposition : Appeal allowed

Judgement :

D.V. Shylendra Kumar, J.

1. This appeal is listed for admission after issue of notice.

2. This appeal by the employer preferred under Section 30(1) of the Workmen's Compensation Act, 1923 is directed against the order dated 13-1-2000 passed by the Labour Officer and the Commissioner for Workmen's Compensation, Hassan. The employer, aggrieved by the order awarding compensation of a sum of Rs. 1,05,895A with further interest at 12% on this amount from the date of the accident till the date of deposit of the amount awarded has challenged the award on several grounds.

3. The brief facts leading to the above appeal are that one Rangaiah aged about 28 years died on 11-3-1994 due to the falling of a tree which was located in the estate of the appellant and which fell on the person while it was in the process of being cut and removed by a person who had been authorised by the employer. That the death of the person was due to this incident is not in dispute. The wife of the deceased filed an application under the provisions of the Workmen's Compensation Act praying for compensation on the premise that the deceased was an employee of the appellant, working in the coffee estate as a coolie and that the accident, took place while he was engaged in his work at the estate and as such she is entitled for compensation being a dependant. The appellant-employer/owner took the stand that the deceased was not an employee under him; that there was no relationship of employer and employee and the person who died due to the falling of the tree was not in his workplace but was walking on the side road of the estate and under such circumstance the claim against the appellant was not tenable. It was further pleaded that the owner of the estate had sold away timber to one Sirajuddin who in turn engaged a contractor to cut and remove the trees and while tree was being cut, due to the careless action on the part of the contractor of the said Sirajuddin, the accident had occurred and that the appellant was not in any way responsible to compensate the claimant in respect of the death of her husband.

4. In view of such rival pleadings the Commissioner for Workmen's Compensation framed the following issues:

(I) As to whether the claimant proves that her husband was an employee under the respondent-owner working in his estate and as such is an employee within the

meaning of the expression 'workman' under Section 2(1)(n) of the Act?

(II) As to whether the claimant proves that her husband was working as a coolie in the estate of the respondent-owner and whether he died due to the accident that took place during the course of such employment?

(III) Whether the claimant proves that she was a dependent of the deceased? And if so what order to be passed?

5. The Commissioner for Workmen's Compensation answered the 3 issues in favour of the claimant holding that on the available material it is proved that the deceased was an employee of the respondent-owner, working as a coolie in his estate for the past 4 years. To arrive at this finding the Commissioner relied upon the oral testimony of the claimant, the statement of another person by name Siddaiah who was a co-worker in the estate, the FIR about the death of the employee due to the accident that took place in the estate, the spot mahazar and the post-mortem report which were exhibited on behalf of the claimant wife.

6. These documents clearly indicate that the accident had taken place and there was sufficient material to hold that the cause of death was due to falling of the tree on the employee.

7. The Commissioner also examined the stand of the respondent that the deceased was not an employee under him but rejected the same, the respondent-employer having failed to substantiate his version. The Commissioner did examine the question as to whether the claimant should have sought for compensation from the so-called contractor. In this regard the Commissioner found that the respondent-employer did not place any material before him; that he had actually given contract labour to any other person and had obtained any permission as per the provision of the Contract Labour Regulation and Abolition Act. In the absence of any permission in accordance with law to engage contract labour the Commissioner concluded that he cannot hold the said Sirajuddin or the person who worked under him to be a person who had hired any labour on behalf of any particular employer.

8. This aspect apart the finding was that the deceased was an employee directly under the respondent and as such no liability was required to be fastened against the contractor due to the factum of employment by the respondent himself.

9. The Commissioner proceeded to quantify the total compensation payable at Rs. 1,05,8957- based on the monthly income of the deceased at Rs. 1,0007- granted compensation under Section 4(1) of the Act and further awarded interest at 12% per annum under Section 4-A.

10. Aggrieved by this award of the Commissioner the respondent-owner has preferred the above appeal. Sri K.T. Gunideva Prasad, learned Counsel for the appellant has submitted that the order passed by the Commissioner is not sustainable and is liable to be set aside. He submits that there is no relationship of employer and employee and the Commissioner did not get jurisdiction to pass an order for fixing liability on the appellant under the Act.

11. That the Commissioner ought to have declined to look into the application inasmuch as necessary parties had not been impleaded particularly when the claimant applicant had not impleaded the contractor as a party respondent to the proceedings. Such non-joinder of necessary party is fatal to the application and the application ought to have been rejected by the Commissioner. Counsel further urged that in the alternative it is open to this Court to set aside the order and remand the matter to the Commissioner for such purpose to implead necessary parties.

12. The learned Counsel has also submitted that the Commissioner has not appreciated the evidence on record properly and has misread the documents particularly Ex. P. 1 which is the complaint lodged by the father-in-law of the deceased which clearly indicates that the deceased was injured and later died when he was carrying fuel on his head and walking on the road. By placing reliance on Ex. R. 2 which is the document to indicate that there was some settlement between the parties particularly between the claimant and the contractor for settling the claim of the applicant by paying a sum of Rs. 10,0007- by the said Jagannath who was contractor under Sirajuddin to whom the respondent had sold the timber grown in his estate, the learned Counsel for the

appellant submits that this document clearly indicates that the deceased was not an employee under him as the matter was sought to be settled between the contractor and the wife of the deceased and in spite of such clear evidence the Commissioner has fastened the liability on the appellant which is clearly unsustainable in law.

13. The learned Counsel for the respondent on the other hand submitted that the order passed by the Commissioner is in accordance with law, based on material record and does not call for any interference at the hand of this Court.

14. I have given my anxious consideration to the rival submissions. Under Section 30(1) of the Act an appeal lies to this Court if it involves substantial question of law. In the instant case the learned Counsel for the appellant has raised the question that the deceased was not an employee under him and as such it amounts to a question of law and further a finding rendered without appreciating the documents correctly also involves a question of law and this requires consideration by this Court, in this appeal.

15. The question as to whether the deceased was an employee or not is essentially a question of fact though based on material on record and may be some time become a mixed question of facts and law. In the instant case there is sufficient material on record in the form of oral evidence of the claimant and co-worker by name Siddaiah who had been examined by the applicant to infer that the deceased was employed under the respondent as a coolie and was working for the past more than 4 years. However, the documents namely, Exs. P. 1, P. 2 and P. 3 go to show that the incident had taken place and that the person died due to the accident. Based on such evidence the Commissioner concluded that the deceased was not only an employee of the appellant but the accident also took place while he was working in the estate as an employee. I do not find that this finding can be characterised either perverse or totally an impossible inference. In fact, on the other hand the finding that the respondent is an employer of the deceased evolves as a most possible and probable finding with the evidence on record. It is the stand of the employer that he had given work on contract for cutting the trees etc., and the accident took place because of the negligence of the

contractor. This in no way absolves the employer of his liability as the finding is that the deceased was an employee under the owner, respondent. The submission of the learned Counsel that non-impleading of the contractor is fatal to the proceedings initiated by the applicant is not tenable for the reason that under the provisions of Section 12 of the Act the principal employer can only seek for indemnification by the contractor in respect of the liability arising out of a claim made by a person engaged by a contractor. The claim can be proceeded either against the principal employer or against the contractor or against both. The only effect in not impleading the contractor is that the claimant cannot seek compensation from a person who has not been impleaded as a party to the claim application but it will not render bad claim application itself. In the instant case it is not in dispute that the accident took place because of the falling of the tree which had been grown in the estate of the respondent-owner and in the course of cutting and removing of that tree by a person authorised by the owner. The owner is basically liable in respect of any claim arising out of such an incident. In any view of the matter the owner is not exonerated of his liability. If at all he can establish that the accident had taken place due to the negligence of the contractor to whom he has entrusted or sold the timber he can claim reimbursement of the compensation amount which he is liable to make good to the claimant and nothing beyond.

16. The learned Counsel for the appellant has also contended that the Commissioner has applied the provisions of law under the Act as it stands subsequent to the Amending Act 30 of 1995 which is given effect to from 1-5-1995. He submits that the accident took place on 11-3-1994 and the law as it prevailed on that day should have been applied in determining the quantum of compensation. In this behalf he relied upon a decision of the Supreme Court in the case of Kerala State Electricity Board and Anr. v. Valsala K. and Anr.,

17. It is true that the provisions of Section 4(1)(a) as it stood on the date of the accident provided for computing compensation based on 40% of the monthly income of the deceased. In the present case the Commissioner has taken 50% of the monthly income. It is also the fact that the rate of interest for compensation awarded provided under Section 4-A of the Act prior to the amendment of the Act

was at 6% which is given effect to on and after 1-5-1995. In this view of the matter the quantification made by the Commissioner is erroneous as the application was made prior to the amendment and therefore the quantification made based on law as it exists subsequent to the amendment is not correct.

18. In the result, this appeal is allowed in part. The judgment and award of the Commissioner for Workmen's Compensation is modified, modifying that the quantum of compensation payable to be at Rs. 84,716/- with interest at 6% per annum thereon in accordance with the provisions of the Act. The respondent-claimant is permitted to withdraw the amount to the extent that is awarded under this judgment. The appeal is disposed off accordingly. If there is any excess amount after disbursing the amount in favour of the claimant as per this judgment such excess amount shall be refunded or returned to the appellant.

19. Parties to bear their own costs in this appeal.

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