

The Proprietor Vs. Mary

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Court : Karnataka

Decided On : Jul-26-1994

Reported in : I(1995)ACC125

Judge : R. Ramadkrishana, J.

Appellant : The Proprietor

Respondent : Mary

Judgement :

R. Ramadkrishana, J.

1. This appeal is under Section 30 of the Workmen's Compensation Act, 1923 (for short the 'Act'). Notice was ordered for the respondent and she is represented.

2. By taking consent of the learned Advocates, the appeal is heard on its merits and the following order is passed.

3. An important question that requires determination in this appeal is:

Whether the maxim 'Action Personalis Moritur Cum Persona' is applicable to claims arising under the Workmen's Compensation Act, 1923?

4. For proper appreciation of this question the brief facts of the case presented is as follows:

One Doraswamy who claimed to be a workman in the estate owned by the appellant has filed an application under Section 3 of the Workmen's Compensation Act before the Commissioner under the Workmen's Compensation Act, Kodagu for the employment injury said to have been sustained on 21.2.1983 when he was employed by the appellant. When this application was pending the said Doraswamy died a natural death. The respondent who is the wife of late Doraswamy has continued proceedings on behalf of her husband which ultimately culminated in an award. The Commissioner has awarded a sum of Rs. 6,720/-.

5. The appellant has questioned the order of the Commissioner on several grounds. Initially it is the case of the appellant that the application for claim being preferred after the period of limitation the Commissioner ought not to have entertained the application; the second ground of the appellant is that the deceased Doraswamy was not a workman in the estate and the finding of the Commissioner on this question requires to be interfered with; the third ground urged by the appellant is that the present respondent is not entitled to the compensation for the personal injuries sustained by her husband under the maxim 'Action Personalis Moritur Cum Persona'.

With regard to the first ground under Section 10 Sub-clause (1) the claim shall be preferred within two years of the occurrence of the accident in case of injury and two years from the date of the death if the person died due to the employment injury. The Act also provide for the Commissioner to condone the delay in preferring the claim petitions beyond the period prescribed under the statute. The proviso thus provides that the Commissioner may entertain and decide any claim for compensation in any case notwithstanding that the notice is not preferred in due time as provided in its Sub-section, if he is satisfied that the failure to give notice or to prefer the claim, as the case may be, presents a sufficient cause.

6. It is true that the Commissioner has not framed any issue to decide the question of delay as obviously there was no objection by the appellant on this point. It is submitted that though he has stated in petition the reason for filing the application after lapse of six months, the Commissioner has failed to take note of this fact in this order. The respondent, the wife of deceased also stated in her evidence that

the delay is required to be condoned for the reasons given by the deceased. By taking these facts into consideration that though there is no specific order made by the Commissioner on the basis of no laches having been committed by the respondent, the delay is condoned.

7. The next question agitated by Sri Ajit Gunjal, the learned Advocate for the appellant is that the materials produced are insufficient to prove that the deceased was a workman under the appellant. On behalf of the appellant, one of the owner was examined before the Commissioner. He has denied the contention of the appellant that he was a workman. In support of the said contention, Ex. P. 1 a register of wages from April 1982 to January 1984 were produced where admittedly the name of the husband of the respondent is not included alongwith other persons.

8. The Commissioner has taken into consideration the evidence of the respondent that the deceased was a permanent workmen working in the said estate and a house was also provided in the said estate where the deceased was living continuously until the death and even after his death, the respondent continue to live in the same house. However, the Commissioner has taken into consideration Ex. P. 1 and Ex. P. 2 which are the letters addressed to medical officer, Government Hospital indicating thereon that the deceased Doraswamy was a labourer in the estate of the appellant and needful is to be done as he is suffering from leg pain. Ex. P. 1 is dated 8.7.1985 and Ex. P. 2 is dated 9.7.1985. Another two letters were attached alongwith these two exhibits which are produced by the respondent, which discloses that the deceased Doraswamy was admitted in Madikere Hospital on 21.2.1983 and was discharged on 7.5.1983. The orthopaedic opinion shows that he had a compound fracture of left Tibia.

9. These documents support the fact that the deceased Doraswamy sustained an injury which compelled him to hospitalize from 21.2.1983 to 9.5.1983. This is supported by the evidence of the respondent that the injury was not cured and he was suffering from that fracture and obviously the letters Exs. P. 1 and P. 2 are the subsequent introductions made by the appellant for further treatment of Doraswamy.

10. On appreciation of these documents, they disclose that the deceased Doraswamy was an estate labourer under the appellant and he having sustained the injury was treated in the hospital. To decide that it is an employment injury, the evidence of the respondent is sufficient to draw this conclusion. Therefore the Commissioner has taken this aspect into consideration but not exhaustively discussed. But it is sufficient if the conclusion reached by the Commissioner has got a direct bearing on the oral and documentary materials placed before him. Therefore the finding of the Commissioner that the deceased was a workman at the time he sustained the employment injury and subsequently until his death does not call for any interference in this appeal.

10(A). The appellant relied on Ex. P. 1, Register of Wages from April 1982 to January 1984, to show that the deceased was not working in the estate. This contention is totally unacceptable as the Register commencing from April 1982 onwards, where as the deceased was injured on 21.2.1983 and never resumed his work due to gravity of the injury.

11. Sri. Ajit Gunjal, the learned Advocate for the appellant submits that the respondent is not entitled to the compensation for the injuries sustained by her husband in view of the settled law on this question that maxim 'Action Personalis Moritur Cum Persona' is applicable and therefore the Commissioner has committed an error in awarding the compensation. The learned Advocate has relied on a decision of this Court in Muniyappa S. v. H.L. Narasimhaiah KLR 1984 (1) page 41 rendered by a Division Bench and also a decision of the Full Court in Kannamnta v. Deputy General Manager reported in : ILR 1990 KAR4300 .

12. In Muniyappa's case, the Maxim 'Action Personalis Moritur Cum Persona' is held to be applicable to claims made by a person who sustains injuries in a motor accident under the maxim, personal right to action dies with the person in common law of England which is also accepted in India.

13. When this matter came up before the Full Court in Kannamma 's case, reliance was placed to the earlier Judgments on this point, and also the pronouncement made by the Supreme Court of India. The Full Court reached the following conclusion:

Para-12: In the result the Full Bench answers the question referred for its decision by the Division Bench, thus:

(i) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss to estate) cannot, on such person's death occurring not as a result or consequence of bodily injuries sustained from a motor accident, be prosecuted by his/her legal representatives; but

(ii) A claim petition presented under Section 110-A of the Motor Vehicles Act, 1939, by the person sustaining bodily injuries in a motor accident, claiming compensation for personal injuries as also for compensation towards expenses, loss of income, etc., (loss of estate) can, on such person's death occurring as a result or consequence of bodily injuries sustained in the motor accident, be prosecuted by his/her legal representatives only in so far as the claim for compensation in that claim petition relates to loss of estate of the deceased person due to bodily injuries sustained in the motor accident.

13(A). As against the above pronouncement on this point, Sri Gowri Shankar, the learned Advocate for the respondent placed reliance in *Margarida Gomes and Anr. v. Messrs. Mackinnor Mackenzie and Co. Pvt. Ltd.* : AIR1968 Bom328 . A learned Single Judge of that Court had an occasion to deal directly on this point.

14. The facts and circumstances of that case was, one Santoline Fernandes who was employed by the respondent has sustained an injury on his eyes. He during the course of employment was treated in various places when he was under the employment. He continued to have the defect in his eyes and therefore he made a claim under Workmen's Compensation Act. During the pendency of the application, he died and his heirs made application to the Commissioner for being brought on record as legal representatives. This application was resisted and the Commissioner rejected the said application. When this order was questioned before the Bombay High Court, a learned Single Judge had dealt with this law exhaustively and the conclusion reached was:

The liability in the case is created immediately on the accident occurring to the workmen suffering injury and must amount to a debt payable to the workman.

15. A distinction was also made to the language of Section 306 on which the Maxim' has support to deny the compensation to the legal representatives and the learned Single Judge held:

The language of Section 306 of the Succession Act may no doubt appear to be general, but it is not always that a word of general import must necessarily receive a general and wide meaning. The words 'other personal injuries not causing the death of the party' are preceded by the words 'defamation, assault, as defined in the Penal Code'. These words 'other personal injuries...', therefore must receive colour from the earlier words and ought to be construed *ciusdem generis* with the words breeding.

16. The conclusion reached was that the right of compensation claimed to a workmen on his death is transmitting to his heirs. The application filed by the heirs to be brought on record as legal heirs on the death of the workmen the claim for compensation shall not be dismissed, since there is no provision for dismissal of the application on the ground of death. The case is to be conducted to reach its legitimate conclusion.

17. I am in full agreement with the judgment of the Bombay High Court which will have a bearing directly on the point.

18. The attention of the Court is also drawn by the Bar to a decision in *Rameshwar Manjhi v. Management of Sangramagarh Colliery* : (1994)ILLJ376SC . It is a case arising under the Industrial Disputes Act. The death of workmen pending reference (including of individual dispute) or application under Section 33C(2) of the Industrial Disputes Act was considered and held that on the death of a workman his heirs and legal representatives can continue the reference. Even when the reference is of an individual dispute under Section 2A of the Act on death of the workman the Tribunal does not become *functus officio* or the reference does not abate merely because pending adjudication, the workman concerned dies. It is open to the heirs and legal representatives of the deceased workman to have the

matter agitated and decided.

19. Having regard to these facts and circumstances, though the order impugned does not deal with all these matters and the law being well settled regarding a dispute arising under a special statute the question framed above is held in the negative.

20. In the result, this appeal fails and the same is dismissed with costs and interest throughout.

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