

Manoj Kumar Behera Vs. Dilip Kumar Das

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Court : Orissa

Decided On : Jul-16-1993

Reported in : I(1994)ACC50; (1994)IILLJ801Ori

Judge : G.B. Patnaik, J.

Acts : Workmen's Compensation Act, 1923 - Sections 30(1)

Appeal No. : Misc. Appeal No. 461/1990

Appellant : Manoj Kumar Behera

Respondent : Dilip Kumar Das

Advocate for Def. : S.R. Misra, Adv.

Advocate for Pet/Ap. : M. Sinha, Adv.

Disposition : Appeal dismissed

Judgement :

G.B. Patnaik, J.

1. This is an appeal against the order of the Commissioner for Workmen's Compensation awarding compensation to the tune of Rs. 81,926/-. The quantum of compensation arrived at is not under challenge, but what is under challenge is the liability of the appellant to pay the compensation in question.

2. Respondent Dilip Kumar Das filed an application claiming compensation before the Commissioner alleging that he sustained bodily injury while discharging his duty in repairing a vehicle bearing Registration Number W.B.S. 5032 belonging to one Baman Dubey. It was pleaded that he was working as a Mechanic in the garage of the appellant which is called Babamani Automobiles at Budamara. On the relevant date, on the instruction of the proprietor Manoj Kumar Behera (then appellant), said Dilip took up the repair work of the vehicle in question and while so repairing sustained severe injury on the spinal cord and became immobile. It was alleged that he was receiving Rs. 750/- per month and was aged 24 years on the date of the accident.

3. The appellant filed his written objection before the learned Commissioner denying the entire averments made in the claim petition. It was pleaded that neither Dilip was a workman working in his garage nor had he ever taken up any work beyond the garage premises. He also pleaded that he has no knowledge of deputing the respondent on April 1, 1989 for repairing the vehicle W.B.S. 5032. A specific stand was taken that Dilip was a mechanic who is not attached to any garage but usually sits in a road-side hotel near Budamara and takes up repair works being called by truck owners and other drivers, as a free lancer and, therefore, the accident not having occurred in course of employment, no liability can be fastened on him.

4. On these pleadings, the Commissioner framed as many as six issues of which issue No. 3 is a vital issue and that was to the effect:

'Whether the injured Dilip Kumar Das was a workman within the meaning of W.C. Act? Did the accident occur in course of his employment and arose out of it?'

In support of their respective cases, two witnesses on either side were examined. The Commissioner on appreciation of the said evidence accepted the evidence led by the claimant and discarded the evidence led by the owner of the garage. Ultimately, he came to the conclusion that injured Dilip was working in the garage of Manoj and he sustained the injuries in question in course of his employment while attending to the repair work of the vehicle registered as W.B.S. 5032. Therefore taking into consideration the amount which he was earning and his age,

the Commissioner determined the quantum of compensation. It is against this award, the present appeal has been preferred.

5. It may be noticed that under the proviso to Section 30(1) of the Workmen's Compensation Act, no appeal lies against any order unless a substantial question of law is involved in the appeal. Mr. Sinha appearing for the appellant argues with vehemence that if the Commissioner appreciates the evidences in a perverse manner and reaches a conclusion, then the ultimate conclusion will be vitiated and this would come within the ambit of the expression 'substantial question of law' and the Appellate Court would be entitled to entertain the appeal and determine the legality of the conclusion arrived at by the Commissioner. Mr. Sinha further urges that there being no material to come to the finding that the injured sustained the injury in course of employment, the order of the Commissioner fastening the liability on the appellant is unsustainable in law. In support of these contentions he places reliance on certain decisions, but I do not think it necessary to go into those decisions. Since a contention was advanced before me that the appreciation of evidence made by the Commissioner is perverse, I have myself gone through the evidence of the two witnesses who have been examined on behalf of the claimant and the two witnesses who have been examined on behalf of the owner of the garage where the claimant had claimed to be working. On examining the evidence and on scrutinising the impugned order of the Commissioner, I see no perversity in the matter of appreciation of evidence made by the Commissioner. By no stretch of imagination it can be said that the conclusion arrived at by the Commissioner on the materials could not have been the conclusion of any reasonable man. By giving cogent and sufficient reasons, the Commissioner has indicated as to why he accepts the evidence led by the claimant and why he rejects the evidence led by the owner of the garage. It is well within the powers of the Commissioner to accept one set of evidence and reject the other by giving sufficient reasons. On going through the evidence on record, which was not necessary in my view, I am of the considered opinion that the conclusion arrived at by the Commissioner remains unassailable and cannot be interfered with by the Appellate Court. When the Commissioner accepts one set of evidence and rejects the other set, it centres round the arena of appreciation of evidence and unless it is established that no reasonable man could have come to that conclusion on the set of evidence led by

the claimant, no substantial question of law arises within the ambit of the proviso to Section 30(1) of the Workmen's Compensation Act. The claimant in his evidence has given a detailed description as to how he was working in Babamani Automobiles of which Manoj Behera is the owner and how he took up the repair work in question and sustained the injury. Harekrishna, who was a co-worker while Dilip was working in some other garage and who has been examined as witness No. 2 for the claimant, categorically stated that Dilip was working in Babamani Automobile Works at Budamara under Manoj Behera and on April 1, 1989 he was informed that Dilip met with an accident at the garage. When he went to the hospital, he found the condition of Dilip to be serious and at that point of time owner Manoj was there who paid Rs. 600/- for expenses. Then it is he who took Dilip to Cuttack and got him examined through Dr. Tejeswar Rao. He further states that the condition of Dilip is deplorable as a result of which he is unable to move. Though he has been cross-examined at length, but nothing has been elicited in the cross-examination from this witness to impeach his testimony. This statement of the witness that he saw Dilip in the hospital and Manoj paying Rs. 600/- for immediate expenses of Dilip goes a long way to establish the case of the claimant particularly in the context of the plea of total denial by Manoj in his written objection. The evidence of Dilip, therefore, gets independent corroboration from the evidence of witness No. 2 on behalf of the claimant and the Commissioner has believed that evidence in arriving at his conclusion. Mr. Sinha in course of his arguments had laid much stress that there is no material to establish that Dilip had been deputed to do the repair work in the vehicle in question and while so repairing, the accident occurred. The fact that Dilip was working in the garage of Manoj having been established and the evidence of Dilip that while he was so working he was directed by Manoj to look to the repair work of the vehicle in question having been believed by the Commissioner, I find no question of law involved to re- appreciate the evidence and to come to a different conclusion.

6. In the premises, as aforesaid, this appeal is devoid of merit and the same is accordingly dismissed. There will, however, be no order as to costs. The amount in question is lying in deposit with the Commissioner for Workmen's Compensation. The amount in question may be paid to the respondent by the Commissioner.

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