

Green Roadways (Regd) Vs. Nirmal Singh and ors.

Green Roadways (Regd) Vs. Nirmal Singh and ors.

SooperKanoon Citation : sooperkanoon.com/696607

Court : Delhi

Decided On : Oct-27-1987

Reported in : I(1988)ACC16; (1995)IIILLJ657Del

Judge : S.B. Wad, J.

Acts : Workman's Compensation Act, 1923 - Sections 2

Appeal No. : F.A.O. 85 of 1985

Appellant : Green Roadways (Regd)

Respondent : Nirmal Singh and ors.

Judgement :

S.B. Wad, J.

1. This is an appeal against the order of the Commissioner, Workmen's Compensation Act, Delhi, dated 1-4-1985. The appellants M/s Green Roadways are a firm carrying on business of goods transportation. In May 1980, the Election Commissioner and the Union of India needed trucks for transportation of Presiding Officers, Polling Officers and other staff, furniture, ballot boxes etc., to different polling stations. They engaged M/s. Green Roadways, the appellants for this purpose. M/s. Green Roadways hired truck No. RST 7719 from the owner Moti Ram. Nirmal Singh claimant is a Driver. He was in the employment of M/s. Green

Roadways. The said truck No. RST 7719 together with the service of Driver Nirmal Singh were entrusted to the Election Commissioner and the Government of India under the said contract. The said truck left the office of the Election Commissioner, Delhi for Udaipur on 23-5-1980 for the purpose of elections under the directions and order of the Union of India and the Election Commissioner. Shri Shanti Lal Jain, Presiding Officer of Polling Station No. 226, his staff, furniture and ballot boxes were being carried to Polling Station in the said truck. Shri Kanti Desai, Deputy Magistrate, had also accompanied them in the said truck. It is stated by the claimants that the area through which the truck was passing was hilly and the road was narrow and uneven on the side of Gongunda in District Udaipur. Though the truck was being driven with great care and caution the road was so bad and tricky that the truck went out of control and clashed against stony hill and the claimant workman received severe injuries including fracture of left knee bone. He was treated at the Military Base Hospital, New Delhi.

2. The claimant workman filed a claim petition with the Workmen's Compensation Commissioner at Delhi. Since the accident had taken place in Rajasthan, the Workmen's Compensation Commissioner Delhi, transferred the petition to Workmen's Compensation Commissioner at Udaipur. Without any sanction, the Commissioner at Delhi recalled the said reference to himself and that is why the matter was heard and finally disposed of by the Commissioner at Delhi. No notice of transfer or retransfer of the references was given to any of the respondents in the claim petition, including the present appellant. On 16-2-1983 the Commissioner at Delhi issued notice of the lodgment of claim by the claimant workman Along with the application for condensation of delay. There was a delay in filing the claim petition by six months. The petition should have been filed on 23-5-1982 but the same was actually filed on 23-11-1982. During the pendency of the said reference Moti Ram, owner of the truck, died: His representatives were not brought on record. The Union of India and the Election Commissioner were served but they preferred not to appear and, therefore, they were proceeded ex parts. On 23-8-1984 the Commissioner listed the matter for recording the evidence on the application for condensation of delay for 13-9-1984. No evidence was recorded on that date but the matter was further adjourned to 21-1-1985. On that date evidence of the workman was recorded. In the normal course after recording the

statement on the application for condensation of delay and hearing the arguments the Commissioner should have pronounced his order on the said application and thereafter proceeded with the case on merits. This procedure was not followed and the Commissioner without fixing up any dates for further proceedings pronounced the final order on 1-4-1985 disposing of the claim petition on merits.

3. The appellants have pointed out several infirmities in the impugned order. Perhaps one way to deal with the matter is to remand it to the Commissioner for fresh decision but as the accident had taken place in 1980 and the workman has not received any amounts towards the compensation for the last seven years, I would not therefore like to further delay the matter and cause further hardship to the workman.

4. A more substantial legal infirmity in the impugned order is that the Commissioner has fastened the liability on the appellants without even considering as to who is an employer in this case under Section 2(e) of the Act. The definition of the employer reads:

'(e) 'employer' includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other persons while the workman is working for him.'

Admittedly, the claimant workman, at the time when the accident took place, was performing the duties of carrying on the officers and the goods for the purposes of elections under the directions and orders of the Election Commissioner and Union of India. M/s. Green Roadways had only placed the services of workman Along with the truck at the disposal of the Election Commissioner and the Union of India. The definition of the employer in the Act is an inclusive definition and is a special definition with wider connotation in order to give benefit of the Act to the maximum number of workmen. That is why the second part of the definition covers even such employers to whom the : services of workmen are temporarily lent or let out on hire. From the admitted facts it is clear that the services of claimant workman

were let out on hire to Election Commissioner and Union of India Along with the truck. The scope of the definition is so wide that even temporarily lending the services to a person would make him an 'employer'. I have no hesitation in holding that on the facts of this case the Election Commissioner and the Union of India were the employer of the claimant workman at the time of the accident. M/s. Green Roadways, the appellants, are the formal employers. The workman was not performing the duties of the appellants as such. Thus the accident cannot be said to have taken place in the course of the duties of M/s. Green Roadways.

5. Before the Election Commissioner and the Union of India were proceeded ex parte, they were served number of times. This appeal had also come up for hearing several times but the counsel for Election Commissioner and the Union of India has not appeared.

6. The Commissioner has on the assessment of the entire evidence before him and the nature of injuries suffered by the workman has come to the conclusion that he has suffered loss of earning to the tune of 60%. His salary was Rs. 900 per month and he was entitled to Rs. 892.73 as half monthly wages and compensation of Rs. 22,680. The Commissioner has further held that the employer was liable to pay Rs. 10,000 under Section 4-A(3) as a penalty for not making the payment in time. The Commissioner has also awarded 6% interest from 23-5-1980 till the date of payment to the workman and Rs.500 towards costs. I agree with the Commissioner in regard to the assessment of damages and the compensation including the penalty amount, interest and costs.

7. As I have found that not the appellants but the Election Commissioner and the Union of India are liable to pay the compensation the said respondents are, therefore, directed to pay a sum of Rs. 22,680 towards the compensation, Rs. 10,000 towards the penalty under Section 4-A(3), interest @ 6% p.a from 23-5-1980 till the date of payment and at Rs. 892.73 half monthly wages for the period for which the workman was in hospital. The said respondents are further liable to pay the costs or Rs. 500 as directed by the Commissioner and the cost of Rs. 1,000 in this appeal. The impugned order is set aside and the claim petition as against the appellants is dismissed and the award is made against Election

Commissioner and Union of India. The payments be made by the said respondents within three months from today.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com