

Pushpan Vs. Manager, Bouanu Estate

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Court : Kerala

Decided On : Mar-25-1988

Reported in : 2(1988)ACC76

Judge : V. Sivaraman Nair and; P.K. Shamsuddin, JJ.

Appellant : Pushpan

Respondent : Manager, Bouanu Estate

Judgement :

V. Sivaraman Nair, J.

1. This is an appeal under Section 30(a) of the Workmen's Compensation Act from an order of the Workmen's Compensation Commissioner, dismissing Workmen's Compensation Case No. 72 of 1981, which the appellant had filed claiming an amount of Rs. 25,200/- as compensation. In her application, the appellant stated that he sustained an injury on 13th of July, 1981. During the course of her employment at about 7.55 a.m. while she was proceeding for work in the Estate Nursery. She stated that her salary was Rs. 318/- per month. The application was dated 24-1-1981. The applicant is admittedly an illiterate along with the application, she had filed on authorisation authorising the General Secretary of High Range Estate Thozhilaly Union to conduct the case on her behalf. The sworn statement was taken from her on 20-10-1981, in which she stated that she was involved in an accident at about 7.45 a.m. on 13-1-1981 while she was proceeding

for work in the nursery, that she fell down while she was on her way to work, that her right leg was fractured and that she was taken to the Estate Hospital, and thereafter to a Private Nursing Home at Mundakayam. She was treated in that Hospital for about six months. She could not work thereafter. Her claim for compensation was not heeded to by the Management and therefore she was constrained to file the petition.

2. In the written objections, the Management denied the accident on 13-7-1981. It was stated that the Management was not informed of any such accident, that she was not involved in any accident in the course of her employment and that the necessary particulars viz., time, place and manner of the alleged accident were not disclosed in the application. The applicant filed a replication reiterating that the accident occurred on her way to work and that the time of the accident was about 8 00 a.m. on 13-1-1981. She also reiterated in her statement that the employer arranged for first-aid in the Estate Hospital and thereafter removed her to a Private Nursing Home and that all the expenses of or her treatment were met by the Management.

3. The applicant was examined as AW-1. She stated in her examination, that the accident occurred on 13-1-1981 while she was going for work in the nursery at about 7.15 a.m. According to her, she was proceeding along a short cut, and that consequent on a fall her right leg was fractured. She stood detailed cross-examination fairly well. She stated that her house and the nursery were 2-1/2 forlongs away and that she would take from 5 to 10 minutes to reach the work spot. She also reasserted that she was proceeding to work along the path road which she usually took even though it was possible to go to work along a road constructed by the employer. Another worker, who was examined on the side of the applicant substantially supported her case. After examination of that witness, on 6-4-1982, the applicant filed an application to correct the date of accident as 13-1-1981 instead of 13-7-1981. The employer filed a counter affidavit objecting to the correction in spite of the fact that the applicant had specifically averred on oath, while examined as a witness that the date of accident was 13-1-1981. There was absolutely no cross-examination on that point on behalf of the employer.

4. The employer, thereafter, examined two workmen and the Manager of the Estate as also an Assistant Professor of the Medical College, Kottayam, who had issued Ext. A-1 certificate to the applicant. The attempt of the employer was to make out that the applicant need not have started for work at 7.30 a.m. because work in the nursery commenced only at 8.00 a.m. and that the applicant sustained the injury not while proceeding to work but while attending to her private affairs near the river away from the nursery. It is significant to mention, that no attempt was made during the course of the examination of these witnesses even to suggest the date of the accident and whether it was 13-1-1981 or 13-7-1981. Both of them asserted that the applicant was not taken to the Estate Hospital, nor was she removed to the Private Hospital in Mundakayam. They also pleaded ignorance of her treatment for a period of six months as claimed by her.

5. The Assistant Professor of the Medical College, who had examined the applicant and issued Ext. A-1 certificate, stated that her disability would have been partial and temporary and that she could possibly gain normalcy in course of time. He stated, that whether she had regained such normalcy could be ascertained on further examination. But the employer did not take any step to seek an examination of the applicant.

6. The Manager of the Estate, who was examined on the side of the respondent admitted that the applicant had sustained injury on 13-1-1981. He stated further, that on his enquiries with the conductor, he was told that she met with the accident while she was going to wash her clothes in the morning. He admitted that the petitioner was given medical treatment at the cost of the company. He also admitted, that she was a worker in the Estate Nursery.

7. By the impugned order, the commissioner dismissed the application of the applicant for two reasons viz., that the date of accident which was maintained as 13-7-1981 in the application could not be corrected as 13-1-1981, since the date of the accident was mentioned in words in the application. He held that the date of the accident could not be rectified later by him. On the merits, the Commissioner held, that the accident occurred at about 7.30 a.m. and the petitioner could not have been going for work at that time, since the work was to commence only at 8.00

a.m. and the time necessary to walk the distance from her house to the nursery was about 5-7 minutes. Though the Commissioner referred to the time of accident as 7.55 a.m., he held that the accident must have occurred near about 7.30 a.m. On the basis of these, he held further, that the accident must have occurred not while she was proceeding for work nor during the course of her employment. It was for those two reasons that the application was rejected.

8. It is true, that the Commissioner has succeeded in utilising all the negative devices to frustrate the earnest attempts of an illiterate worker, who was involved in an accident, to obtain some little relief under the Workmen's Compensation Act. It is true, that the date of the accident was mentioned as 13-7-1981 in the application. Petitioner could not sign her name in any language, Malayalam, Tamil or English. The application was, however, in English. She had authorised the General Secretary of a trade-union to conduct her case. It is evident from that authorisation also, that she was absolutely illiterate. However, in her sworn statement, which was taken at the time when the application was taken on file, she had stated positively that the date of the accident was 13-1-1981. The time of the accident as mentioned in the application was 7.55 a.m. In the sworn statement, she gave the time as 7.45 a.m. In the replication filed on her behalf, in answer to the written objections, a specific point was taken, that the applicant was silent about the time, place and manner of the alleged accident'. The applicant specifically averred, that the applicant met with an accident during and in the course of her employment on the way to work spot and the time of the accident was about 8.00 a.m. on 13-1-1981. In her examination as a witness, she stated, that the time of the accident was 7.15 a.m. Considering all these materials, it ought to have been evident, to a reasonably minded authority, administering a welfare legislation, that the time of the accident was between 7.15 a.m. and 8.00 a.m. and nearer 8.00 a.m. than otherwise. The date of accident was definitely on 13-1-1981. Absence of any cross-examination of the applicant with reference to the date of accident puts this position beyond doubt. The Manager of the Estate was examined on the side of the employer. He was also categorical that the accident was on 13-1-1981. The Commissioner erred, and according to us, should, therefore, have allowed the application for correction of the date of accident in the application as 13-1-1981, instead of 13-7-1981. Refusal to do so, on a very

technical plea, that the 'Court' has no jurisdiction to rectify the date of accident in the application, seems to us to be absolutely misconceived. We say so for three reasons.

9. Firstly, the Workmen's Compensation Act is welfare legislation and no technically shall stand in the way of administering the Act in such a manner as to benefit the workmen, who were provided with some recompense in respect of employment injuries. The anxiety of the Commissioner functioning under the Workmen's Compensation Act should rather be to see how the Workmen who were injured during the course of employment and incapacitated as a consequence thereof can be compensated in some little measure by using the beneficial provisions of that enactment. We are sorry to find, that instead of fulfilling this beneficial role in favour of the workmen, the Commissioner, in the present case, adopted a totally negative attitude to see how best he can deny the benefits to the deserving. The beneficial purpose to assist the indolent and illiterate workmen is evident from a perusal of the provisions of Section 22 of the Workmen's Compensation Act, Sub-section (1) thereof states, that no application for the settlement of any matter by a Commissioner other than an application by a dependent or dependents for compensation shall be made unless and until some question has arisen between parties which could not be settled Sub-section (2) prescribed the details which an application shall contain. Sub-section (3) is to the effect, that 'if the applicant is illiterate or for any other reason is unable to furnish the required information writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner'. This Sub-section, according to us, is sufficient indication that in the case of illiterate applicants, the Commissioner has a duty to assist the applicant in furnishing the required information by enabling the application to be pre-prepared under his directions. This essential duty cast on him by the statute was completely forgotten by the Commissioner when he held, that the date of the accident as given in the application could not be rectified in spite of the fact that in her sworn statement and her evidence she had stated that the accident occurred on 13-1-1981 and even in his Chief-examination as RW 4 the Manager of the Estate admitted that the accident occurred on that date.

10. Our second reason for holding that the Commissioner went wrong in refusing relief to the applicant is that he was obsessed by the impression, that he was a civil court and therefore had no jurisdiction to effect a correction in the application. It is true, that Section 23 of the Workmen's Compensation Act confers all the powers of the civil court under the Code of Civil Procedure, for purposes of taking evidence on oath and the enforcing attendance of witnesses and compelling production of documents and material objects. That provision, however, does not constitute the Workmen's Compensation Commissioner as a court for all purposes. Nor does that provision have the effect of disabling the Commissioner from exercising such powers as to further the beneficial objects of that enactment. No provision in the Workmen's Compensation Act disabled an authority like the Commissioner from rectifying an apparent error in the application submitted by an illiterate applicant, whose claim for compensation was denied by the employer.

11. Our third reason to find, that the Commissioner went wrong in refusing relief to the applicant is that he took a far too technical view of the evidence in holding that the applicant was not proceeding to work, since the accident occurred at 7.30 a.m. whereas she need have started from home only by about 7.50 a.m. or 7.55 a.m., or that she could have proceeded along the road instead of along a short-cut to reach her work spot. It is evident, on a perusal of the pleadings and the evidence, that the time of the accident was, or can be taken as 7.15 a.m., 7.30 a.m., 7.45 a.m. or 7.55 a.m., and about 8.00. a.m. Obviously, these different timings could only be approximations. The Commissioner assumed that applicant should have started at the earliest of the times mentioned by her. In her application, she stated that the accident occurred at 7.55 a.m. In her replication she stated that it was at 8.00 a.m. In her evidence she mentioned the time of accident as 7.15 a.m. The witnesses mentioned the time of the accident differently as 7.30 or 7.43 a.m. It is evident, that none of these statements could be taken with that exactitude which the Commissioner assumed. If she was proceeding to the work spot, whether it was five minutes later or 15 minutes earlier did not matter at all. The essential question was, was she proceeding for work? It was evident, that she had left her house along the path which she usually took and was proceeding in the direction of the nursery where she was employed. The fact that she need have started only five or seven minutes latter is no reason to hold that she was not proceeding for

work. The fact that she started a little earlier did not justify an inference that she was not going for work. The evidence indicates, that the nursery was in the proximity of the river as it usually has to be. There is conflicting testimony of the distance between the nursery and the river, 3-1/2 furlongs to 4-1/2 miles. In cross-examination, the witnesses stated, that she did not know the difference between a furlong, a kilometer, and a mile. The essential thing is that the applicant was proceeding from her home in the general direction of her work-spot and at about the time when she was to report for duty. It is also evident, that she was proceeding along the path which she usually took to proceed to her work-spot. It is important, that there was absolutely no attempt to demolish her testimony in this regard. Though there was some evidence that there was a road constructed by the employer and most of the workmen, including the witnesses, were proceeding along that path, that she took a short-cut is no reason to hold that she was not proceeding for work. It is significant, that the Manager of the Estate definitely averred that the applicant was taken to the Estate dispensary and was, thereafter, removed to a Private Hospital at the expenses of the Estate to provide her medical treatment. It is evident from the testimony of witnesses, that such facilities were provided only to workmen who sustained injuries during the course of the employment. It was therefore more probable that the applicant sustained the injuries during the course of her employment.

12. Counsel for the respondent-employer submits, that an appeal under Section 30(a) of the Workmen's Compensation Act lies only against an order of the Workmen's Compensation Commissioner involving a substantial question of law and there is none in the present case. We are, however, not inclined to agree. The first question of law which does arise is whether the Workmen's Compensation Commissioner does not have the power to rectify the date of an accident in the application filed by an employee in the context of Section 22(3) of the Workmen's Compensation Act. Another question which is as important as the previous one is as to whether the Commissioner of Workmen's Compensation is not obliged to exercise his power and jurisdiction to give effect to the beneficial provisions of the enactment rather than discovering some reason for refusing the relief in deserving cases. We are, therefore, of the opinion that substantial questions of law are involved in this appeal, and, therefore, the appeal is maintainable. In the light of

the above, we are of the opinion that the Workmen's Compensation Commissioner erred in law in rejecting the application of the applicant. We hold, that the accident was during the course of employment under the respondent on 13-1-1981 and that the respondent is liable to compensate the applicant under the provisions of the Workmen's Compensation Act.

13. The next question is the relief which the applicant is entitled to she had averred in her application that she had a monthly wage of Rs. 318/-. That was not controverted affectively by the employer. In her evidence as a witness, she stated that she was receiving a monthly wage of Rs. 300/-. There was no cross-examination worth the name on that count. In Ext. A1, Dr. Viswanathan, who had examined her stated, that there was disablement and loss of earning capacity to the extent of 25%. He had, however, stated that the position will improve as time passes. The exact extent of disability at the relevant time was not, however, ascertained. The Commissioner could have worked out the amount due to the applicant in accordance with the schedule attached to the Act. In Ext. A1, the medical witnesses had stated, that 'It will be difficult for her to continue her duties as an estate labourer'. That sufficiently justifies an inference that she sustained permanent partial disablement. She was aged 45 immediately prior to the accident. According to Schedule IV, the factor for determining compensation is 169.44. The amount of compensation has to be arrived at by multiplying her monthly wages of Rs. 300 x 169.44 x 50/100 That works out to an amount of Rs. 25,416/- what the claimant had claimed in the application was only Rs. 25,200/-. But this Court has held in 1974 KLT 259, that the amount due under the Act has to be awarded. We are, therefore, of the opinion that the applicant is entitled to succeed in her application. The amount of compensation due to the applicant will be fixed at Rs. 25,416/- as on the date of the accident. The respondent shall pay the same along with interest at the rate of 9% from the date of institution of the proceedings till the date of payment.

14. The appeal is allowed as above. There will be a further direction, that the respondent shall pay the costs of the applicant.