

Madanlal Vs. Mangali

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Court : Rajasthan

Decided On : Mar-08-1960

Reported in : AIR1961Raj45; [1960(1)FLR590]

Judge : L.N. Chhangani, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2(1) and 30

Appeal No. : Civil Misc. Appeal No. 59 of 1959

Appellant : Madanlal

Respondent : Mangali

Advocate for Def. : Marudhar Mridual, Adv.

Advocate for Pet/Ap. : Sohanlal Chowdhary, Adv.

Disposition : Appeal dismissed

Judgement :

L.N. Chhangani, J.

1. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act) by Madanlal, an employer, from the order of the Workmen's Compensation Commissioner, Jodhpur, dated 15th April, 1959, awarding a sum of Rs. 900/- to the respondent Mangali in respect of an accident

resulting in the death of Miss Gopi, daughter of the respondent.

2. The material facts may be very briefly stated as follows:-

Madanlal, the employer, is a clerk in Maharaja Umed Mills Ltd., Pali. He owns two houses at Pali. One of the houses is used by him for his residence. The other house is utilised for purposes of leasing it to others, and the employer has been deriving in-come therefrom. In respect of this second house, he started construction either by way of repairs or by way of additions and improvements in the year 1957.

Miss Gopi, daughter of the respondent was employed as a labourer in connection with this construction. On 4th November, 1957 when deceased Gopi was collecting construction materials on the ground-floor, the verandah on the third floor of the building under construction fell down and she received very serious and fatal injuries, which ultimately caused her death on the same day at 4-30 p.m. The respondent Mst. Mangali is the mother of the deceased Gopi and is consequently her dependant.

On 16th November, 1957, the respondent put up an application before the Commissioner for awarding to her Rs. 900/- as compensation on account of the death of Miss Gopi. The appellant denied the claim of the respondent. His case was that Miss Gopi, the deceased, was a casual labourer employed on daily wages only and that the house was being constructed for the personal use of the non-applicant and consequently, Miss Gopi was not employed for the purpose of the employer's trade or business. He expressed ignorance about the allegation made by the respondent that she was a dependant of the deceased Gopi.

3. The Commissioner framed the following three issues:-

(1) Whether (Miss) Gopi was employed as a casual labourer under the employment of the non-petitioner which employment was neither his trade or business.

(2) Whether the applicant is the widowed mother of (Miss) Gopi.

(3) What relief the applicant is entitled to?

4. He decided issue No. 1 against the non-applicant and issue No. 2 in favour of the applicant, and awarded a sum of Rs. 900/- as compensation.

5. Aggrieved by this order, Madanlal, the employer, has filed the present appeal.

6. I have heard Mr. Sohan Lal Chowdhary on behalf of the appellant and Shri Marudhar Mridul on behalf of the respondent.

7. Learned counsel for the appellant has urged two main contentions in this appeal:

(1) That, the deceased, Miss Gopi was not a workman within the meaning of the term as defined in Section 2(1)(n) of the Act.

(2) That, Miss Gopi was not employed by the appellant, but was employed by one Ramzan, a contractor working on his behalf and, therefore, he cannot be held liable for payment of any compensation.

8. Dealing with the first contention, it will be useful to quote the relevant portion of the definition of 'workman' as given in Section 2(1)(n) of the Act:-

'Workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i)

(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule II.

9. Schedule II specifies the various capacities in which the employment of workmen will bring them within the category of the definition. Article (viii) of Schedule II provides that a person is a workman who is employed in the construction, re-pair or demolition of any building which is designed to be or is or has been more than one story in height above the ground or twenty feet or more

from the ground level to the apex of the roof. The building in connection with the repairs of which Miss Gopi died, answers to the description given in Article (viii) of Schedule II and obviously the status of Miss Gopi as a workman cannot be disputed on the nature of employment. The learned counsel, however, has urged the following points for consideration in support of his contention that Miss Gopi was not a workman :-

(1) That, she was not in receipt of monthly wages and was a daily wage-earner and, therefore, she could not be a workman in view of the words, 'on monthly wages not exceeding four hundred rupees' occurring in Section 2(1)(n) of the Act.

(2) That, her employment was of a casual nature and that she was not employed for the purposes of the employer's trade or business.

10. The determination of the first contention depends upon the proper interpretation of the words 'on monthly wages not exceeding Rs. 400/-'. According to the appellant, these words imply that the workman must be in receipt of monthly wages. I am not, however, prepared to accept this interpretation of these words. These words came up for consideration in *Ellerman's City and Hall Lines v. Asis Thomas*. AIR 1938 Bom 110.

Beaumont C. J. after considering the various provisions of the Act expressed an opinion that

'the reference to employment on monthly wages in Section 2(1), Sub-clause (n) means employment at wages which do not exceed an average of Rs. 300 (now Rs. 400/-) a month. It seems to me quite impossible, reading this Act as a whole, to say that it was limited to workmen who are employed by the month so that it would not include workmen employed by the day or by the week or by the year.

If that were the meaning of the Act, every employer could get out of it by employing his workmen otherwise than by the month. I feel no doubt whatever that the meaning of the expression 'monthly wages not exceeding three hundred rupees' means wages which do not exceed on an average of Rs. 300/- a month'.

The learned Chief Justice in this connection derived support from Section 5, which deals with the method of calculating wages.

11. No contrary authority has been brought to my notice and I have no hesitation in accepting the interpretation placed on these words by Beaumont C. J. and in holding that a daily wage-earner may very well be a workman under Section 2(1)(n) of the Act.

12. The second point urged on behalf of the appellant was that Gopi's employment was of a casual nature. The term 'casual' as used in the section is not a matter of precision, but is a colloquial term. It is not capable of being exactly defined. The word 'casual' is some times used as opposed to ordinary as for example in connection with leave claimed by Government servants. Some times, it is used to denote occasional as opposed to regular.

It cannot be said to have one uniform meaning. The use of the word 'casual' in this context was considered by Beaumont C. J. in an earlier Bombay case, *Nadirsha Hermusji Sidhwa v. Krishnabai Bala*, AIR 1936 Bom 199. After referring to English rulings the learned Judge observed that,

'the rule adopted in England is this; that it is impossible to define what casual employment is. There are some cases in which the employment is obviously not casual, and other cases in which the employment is obviously casual. There are a number of debatable cases between those two extremes and the Courts have held that in those debatable cases, the decision of the County Court Judge must prevail'.

Indeed, it is very difficult to lay down a precise test for determination, 'whether a particular employment is casual or not'. We may, however, adopt rough tests by posing questions, whether the employer not ordinarily requiring the employment of a labourer employs some labourer, or whether an employee not ordinarily standing in need of employment, by chance accepts a particular employment.

It will be again a very difficult question whether both the tests should be satisfied or satisfaction of one of the requirements will be sufficient. In my opinion, it will be

futile to attempt a formula, for judging whether an employment is casual or not, for in the ultimate analysis, it is a question of fact to be determined on the facts and circumstances of the case and diverse considerations must weigh in a proper determination of the question.

13. However, the burden of proving the casual nature of the employment must be, in the scheme of the Act, upon the employer and was so placed in this case. The appellant has failed to show either that Miss Gopi sought the employment by chance or that the employer employed her as a matter of chance. In fact, there are absolutely no materials on record to support the contention that her employment was casual.

Besides, it is not open to the appellant to contest a finding of fact in an appeal under Section 301 of the Act, as an appeal lies only when a substantial question of law is involved. The question posed for consideration is essentially one of fact and not of law and can in no case be considered a substantial question of law on a most liberal interpretation of the expression, 'substantial question of law',

14. With regard to the third point that Miss Gopi was not employed for the employer's trade or business, I consider that this again is a pure question of fact. The house in which the construction was going on, was let out to other persons and the employer was deriving benefit therefrom. This is certainly a subsidiary business though not the principal business within the terms of Section 2(1)(n) of the Act. *Vinayaka Mudaliar v. Pottiamma*, AIR 1953 Mad 432, is a clear authority in support of this proposition.

On these facts the compensation Commissioner has in my opinion correctly found that Miss Gopi was employed for the purposes of the employer's trade or business. It will be further pertinent to point out in this connection that the word 'and' occurring in the definition of 'workmen' has been used conjunctively and, therefore, in order to take out a labourer from the category of a workman, both the conditions must be satisfied:-

(1) That the employment must be casual.

(2) That the employment must be otherwise than in the employer's trade or business. Absence of only one of these conditions will not result in taking out a labourer from the category of a workman. In this particular case, however both the conditions have been found to be absent by the Commissioner and as observed above, the findings in this connection being on questions of fact, are not liable to be challenged in this appeal. I must, therefore, hold that Miss Gopi was a workman within the meaning of Section 2(1)(n) of the Act.

15. Now so far as the second contention is concerned, the evidence produced on behalf of the appellant shows that Ramzan was only a *gajdhar* employed by the employer and as *gajdhar*, he was not in a position to employ labourer directly on his own behalf. The employment of Miss Gopi in this case must be held to have been made by the employer Madanlal himself., although through the *gajdhar*. Ramzan.

Learned counsel for the respondent in this connection wanted to argue that the employer Madanlal would certainly be liable for compensation even though it be held that Ramzan employed Miss Gopi as a contractor executing a contract of the appellant. I am not, however, inclined to go into this question, as in my opinion it has been clearly proved on re-cord that the employment of Miss Gopi was made by Madanlal himself, although through his *gajdhar* Ramzan. There is no force in the second contention raised by the learned counsel.

16. The result is that there are absolutely no merits in this appeal, which is hereby dismissed with costs.