Gani Vs. Dhapuri and ors.

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Court : Rajasthan

Decided On : Jan-29-1957

Reported in : AIR1957Raj246

Judge : Modi, J.

Acts : Workmen's Compensation Act, 1923 - Sections 4, 6, 7, 8(1), 30(1) and 80(1)

Appeal No. : Civil Revns. Nos. 206 and 207 of 1956

Appellant : Gani

Respondent : Dhapuri and ors.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Magraj, Adv.

Disposition : Revisions dismissed

Judgement :

Modi, J.

(1) These two revisions have been filed by Gani against a single order of the Workmen's Compensation Commissioner under the Workmen's Compensation Act (No. VIII of 1923), and raise an identical question of law, namely, whether the said

order is appealable under Section 30, Workmen's Compensation Act.

(2) It is unnecessary for the present purpose to narrate the facts in any detail. It is sufficient to state that the opposite parties are the dependants of the deceased workmen and the learned Commissioner having held that they had died as a result of personal injuries caused to them by an accident arising out and in the course of their employment, has directed that the petitioner should pay a compensation of Rs. 1,500 to each set of dependants of the workmen concerned, and he has distributed these amounts among the various dependants in the manner stated in the order. The question for determination is whether the order of the Workmen's Compensation Commissioner which is sought to be challenged before me in these revisions, is appealable under Section 30 of the Act.

(3) As the question was of some importance I directed notice to be issued to the learned Government Advocate. Having heard the learned counsel for the petitioner and the learned Government Advocate, I have come to the conclusion that the order of the Workmen's Compensation Commissioner was and is open to appeal, and, therefore, the present revisions are incompetent. I now proceed to state the reasons which have led me to this conclusion.

(4) Section 30 which provides for appeals under the Act is in the following terms:--

'30. (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely;-(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to condition;

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in Clause (b) unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer tinder Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2). The period of limitation for an appeal under this section shall be sixty days.

(3). The provisions of Section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals under this section.'

(5) Now, the contention of learned counsel for the petitioner is that the only clause which may properly be held to be applicable to the present cases is Clause (1) (a) of Section 30 and under that clause what has been made appealable are only orders awarding a lump sum compensation by way of redemption of a half-monthly payment or otherwise or disallowing aclaim wholly or partially for a lump sum and learned counsel further argues that such a case arises under Section 6 or Section 7 of the Act only.

Section 6 deals with half-monthly payments and Sub-section (1) provides that such a payment may be reviewed by the Commissioner on the application either of the employer or of the workman under certain circumstances, and Sub-section (2) further provides that any half-monthly payments may, on review under this section be continued, increased, or decreased or ended, or if the accident is found to have resulted in permanent disablement, it may be converted into a lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Section 7 then enacts that any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner.

According to learned counsel the appeal pro-vided for under Clause (a) of Sub-section (1) of Section 30 contemplates appeals from orders passed under Sections 6 and 7 only because the word 'lump sum' has been used in those sections alone and has not been employed in Section 4, whereunder payment of compensation has been ordered in the present cases. The relevant portion of Section 4 runs as follows:--

'Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--(a) Where death results from the injury -

(i) in the case of an adult in receipt of monthlywages falling within limits shown in the first column of Schedule IV-- the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor -- two hundred rupees.'

A reference to Schedule IV would show that fixed amounts have been prescribed as compensation payable in cases of deaths or permanent total disablement, and half-monthly payment as compensation for temporary disablement of an adult, depending upon the monthly wages of the workman injured. Thus in the case of a death of an adult in the receipt of a salary of more than Rs. 45 but not more than Rs. 50, as in the present cases, a fixed compensation of Rs. 1,500 has been provided for.

If the argument of learned counsel for the petitioner is accepted, it would mean that Section 30(1)(a) can have no application to cases of compensation arising on a workman's death at all because the compensation which is ordered is, though a fixed sum, not a lump sum; that word having not been used either in the Schedule IV or Section 4, and it having been used only in cases arising under Sections 6 and 7, Work-men's Compensation Act.

In other words, according to learned counsel all orders of the Workmen's Compensation Commissioner awarding compensation in case of death or permanent disablement are entirely unappealable, the reason being that what has been ordered in such cases is merely the award of a fixed sum as compensation and not a lump sum. I have given this argument my most careful and anxious consideration and find myself unable to accept it.

The ordinary dictionary meaning of the expression 'lump sum' is a sum which is paid in a lump or a mass, that is, something which is paid down at once and not in instalments. The word 'lump sum' has not been defined in the Workmen's Compensation Act, and I see no cogent or compelling reason why it should have a restricted meaning' such as learned counsel for the petitioner wishes to attribute to it.

It may be conceded that the word 'lump sum' has been specifically used in Sections 6 and 7 but this is obviously necessary because the question under those sections arises for redemption or conversion of half-monthly payments into a fixed sum which, be it noted, is a sum prescribed under Section 4 read with Schedule IV of the Act. The scheme of the Act appears to me clearly that in case of death and permanent total disablement fixed sums are prescribed as the amount of compensation payable.

These are nothing but lump sums which may however, be distributed by the Commissioner among the dependants of the deceased workman in such proportion as the Commissioner thinks fit. In that case of temporary disablement, whether total or partial, half-monthly payments are contemplated. Under Sections 6 and 7, these half-monthly payments are, under certain circumstances, permitted to be converted or redeemed into lump sums.

It clearly seems to me that even under Section 6(2) when it is said that a half-monthly payment may, where the accident is found to have resulted in permanent disablement, be converted into a lump sum to which the workman may be entitled, less certain amount which he may have already drawn by way of half-monthly payments, the lump sum mentioned is the figure provided under Section 4 read with Schedule IV of the Act.

To say, therefore, that in cases of death or permanent disablement, Section 4 merely directs certainamounts of compensation to be paid in accordance with the scale laid down in Schedule IV, which amounts are fixed but not lump sums is to say something whichI entirely fail to comprehend. To my mind, that ismaking a difference without any distinction whatever.

(6) Then again, the argument of learned counsel, if accepted, would unduly restrict the scope of Section 30, inasmuch as it will exclude from the ambit of appeals the orders of the Workmen's Compensation Commissioner where fairly big sums may have been ordered to be paid all at once (provided of course the other conditions laid down in Section 30 are fulfilled). A consideration of the entire scheme of Section 30 clearly negatives, in my opinion, such a conclusion.

I see no logical force in the position that anorder awarding a lump sum amount by way ofredemption of a half-monthly payment can undoubtedly be appealed from (assuming of course that theother conditions laid down under Section 30 are fulfilled);but that an order awarding a fixed or a lump sumin the very first instance as in the case of a claimarising out of the death of a workman is entirely unappealable.

Such an unreasonable intention could not, in my opinion, be attributed to the Legislature. The expression 'or otherwise' occurring in the clause under consideration is indeed comprehensive and would cover all such cases as the present as being those wherein compensation of a lump sum has been awarded otherwise than by way of redemption of the half-monthly payments.

(7) Learned counsel for the petitioner then invited my attention to the language of Section 8(1) where it is provided as follows:--

'No payment of compensation in respect of aworkman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation.'

His argument was that in the case of a workman whose injury has resulted in death, the word 'lump sum' has not been used, and, therefore, the word lump sum' means something different from the fixed compensation which is paid in respect of a workman whose injury has resulted in death. I regret I cannot accede to this argument.

The word 'compensation' in the earlier part of the sub-section has not been used in opposition to the expression 'lump sum' occurring later, and all that the section means is that compensation payable under the Act must be deposited with the Commissioner where it is in respect of a workman whose injury has resulted in his death, or where compensation is payable as a lump sum to a workman or a person under legal disability.

In other words, if in these cases, the employer makes the payment directly and not through the Commissioner, it shall not be deemed to be a valid payment under the Act. This provision again, in my opinion, docs not lead to the conclusion that the payment of compensation in respect of a workman whose injury has resulted in death is not and cannot be a lump sum compensation.

(8) Let us now look at Section 9 in this connection which, in my opinion, clinches the issue. The material portion of Section 9 reads as follows:--

'Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment............'

If the argument of learned counsel be accepted ad sound, then the amount payable to a workman say, on account of permanent disablement or to his dependants in case of his death under Section 4 would fall outside the protection of this section for the alleged reason that the payment of compensation in such cases is not covered by the word 'lump sum' and the phrase 'half-monthly payment' cannot possibly apply to such cases being compensation for temporary disablement.

What deserves to be emphasised in this connection is that if this provision is held to be not applicable to cases of compensation for death or permanent disablement, then there is no other provision in the Act which provides for immunity from attachment or the other forms of protection envisaged in Section 9 to a workman or his dependants in such cases. It cannot possibly be accepted for a moment that the intention of the Legislature ever was to exclude such cases from the benefit of Section 9.

That being so, I have no hesitation in concluding that the word 'lump sum' rightly bears a wide connotation in accord with the ordinary meaning of the word and cannot be given any technical or restrictive meaning.

(9) Having regard to the considerations discussed above, I am definitely of the opinion that the word 'lump sum' used in Clause (a) of Sub-section (1) of Section 30 has not been used in any narrow or restricted sense so as to cover cases arising under Sections 6 and 7 of the Act only but is wide enough to cover those cases also where a fixed compensation is ordered in cases of death or permanent total disablement, and that the words 'or otherwise' occurring in the clause are clearly intended to include all such cases within the scope of the clause.

It must follow as a corollary that the order passed by the Workmen's Compensation Commissioner in the present cases falls within the four walls of this clause and is and was open to appeal within the meaning of Section 30 of the Act. In this view of the matter, there is no escape from the conclusion that the revisions filed by the petitioner are bad and cannot be maintained.

(10) Accordingly I dismiss these revisions summarily as incompetent.