

Gopal Synthetics Vs. Workmen's Compensation Commissioner and Ors.

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Court : Rajasthan

Decided On : Dec-17-1993

Reported in : 1995ACJ908; [1995(70)FLR72]; (1996)IIILLJ1155Raj; 1994(1)WLC646

Judge : V.K. Singhal, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2(1) and 8(4)

Appeal No. : S.B.C.M.A. No. 309/1987

Appellant : Gopal Synthetics

Respondent : Workmen's Compensation Commissioner and Ors.

Advocate for Def. : Mahendra Goyal, Adv.

Advocate for Pet/Ap. : P. Asopa, Adv.

Judgement :

V.K. Singhal, J.

1. This miscellaneous appeal has been filed against the award of the Workmen's Compensation Commissioner, Kota, dated October 12, 1987.

2. Learned counsel for the appellant has raised four main points against the award. The first point raised by learned counsel for the appellant is that Ram Karan, major brother of the deceased, is not a dependant in accordance With the definition given under section 2(1)(d) of the Workmen's Compensation Act, 1923 (hereinafter called as 'the Act'). The said section 2(1)(d) reads as under :

'2(1)(d) 'dependant' means any of the followingrelatives of a deceased workman, namely-

(i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death-

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a predeceased son,

(g) a minor child of a predeceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the workman is alive.'

3. I have considered the arguments of learned counsel for the parties. So far as the award to this extent is concerned, Ram Karan does not fall in any of the categories of the persons defined and as such he is not entitled for apportionment of the amount of compensation. The award is modified to this extent.

4. The second point which has been raised by learned counsel for the appellant is that only claim now remains of Loonga Bai, the mother and she also died on August 3, 1987 and legal heirs of Loonga Bai cannot claim the award. Reliance has been placed on the decision in the case of B.M. Habeebullah Maricar v. Periaswami, (1977-II-LLJ-322). A full Bench of the Madras High Court considered the matter and observed that (headnote of) pp 325-329.

'The object of the Act was to make provision for the payment of compensation to a workman only, i.e., to the concerned employee himself in case of his surviving the injury in question and to his dependents in the case of his death in view of Section 2(1)(n). Section 8(4) which enjoins refund of the compensation to the employer in case no dependents are forthcoming, leaves no room for doubt that the Act was not intended to benefit any person except the workman and his dependants. Section 2(1)(d) defining the term 'dependant' would show that it is not intended to benefit all the heirs of a deceased workman, but to embrace only those relations who, to some extent, depend upon him for their daily necessities, so much so that even some of his nearest and dearest ones, viz., sons who have attained majority, married daughters and an illegitimate daughter, whether married or unmarried, are excluded if they were not dependent on the worker's earnings, wholly or in part. Kinship, coupled with dependency, is thus made the sole criterion for a person to fall within the ambit of the definition. The effect of Section 23 of the Act and Rule 41 of the Rules is that only certain provisions of the Code of Civil Procedure and not others have been made applicable to proceedings under the Act. Order 22 which deals with legal representation in cases where parties to proceedings die is conspicuous by its absence from rule 41 and lends further strength to the conclusion that such representation is not contemplated in cases falling under the Act.'

5. In that case, the accident took place on October 29, 1969. The mother filed a claim for Rs. 3,500/- under the Act before the Commissioner having jurisdiction, but the same was contested by the petitioner. During the pendency of that claim with the Commissioner, the mother also expired and thereupon her son and two daughters made a joint application to the Commissioner praying that they be substituted for their mother as her legal representatives. The Commissioner accepted the application. The order of the Commissioner was challenged under Article 226 of the constitution. The provisions of section 8 of the Act were taken into consideration. The Full Bench of the Madras High Court said that the compensation could be claimed only by the dependant. The order passed by the Commissioner was set aside.

6. The Full Bench of the Madras High Court in the aforesaid case of B.M. Habeebullah Maricar, (Supra) Madras, proceeded on the basis that the provisions of Section 9 of the Act which provide that no lump sum shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor any claim shall be set off against the same has to be interpreted that this provision is not only applicable to the workman who is alive but also to one who is dead and it is the dependant who is to get the compensation. With respect, I am of the view that the said provision is only for the protection of the workman who is alive and cannot be made applicable to one who is a dependant. The language which has been used by the legislature has to be confined with reference to the specific, unambiguous and clear language and cannot be extended beyond that as it would amount to legislating and adding something which is not in the section. The provisions of Section 9 are applicable to the workman alone

and naturally it would refer to the payment which is made to the said workman and it cannot be extended to the dependant nor any assistance could be taken for the purpose of interpretation of the present dispute by invoking the provisions of Section 9. Assistance has also been taken from the Statement of Objects and Reasons of the Bill which reads as under :

'Statement of Objects and Reasons.-The following Statement of Objects and Reasons was made at the time of moving the bill which resulted in the passing of the Act in its original form -

The general principles of workmen's compensation command almost universal acceptance and India is now nearly alone amongst civilized countries being without legislative measure embodying these principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this country with the increasing use of machinery and consequent danger to workmen, along with comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that by increasing the importance, for the employer, of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effect of such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of average workman may be expected. A system of insurance would prevent the burden from pressing too heavily on any particular employer.

After a detailed examination of the question by the Government of India, were addressed in July, 1921 and provisional views of the Government of India, were published for general information. The advisability of legislation has been accepted by the great majority of local Governments and of employers' and workers' associations and the Government of India believes that public opinion generally is in favour of legislation.

In June, 1922, a committee was convened to consider the question. This committee was composed for the most part of members of the imperial legislature. After considering the numerous replies and opinions received by the Government of India, the committee was unanimously in favour of legislation and drew up detailed recommendations regarding the lines on which, in its opinion, such legislation should follow. The bill now presented follows these recommendations closely. A number of supplementary provisions have been added, where necessary, but practically no variations of importance have been made.

The Bill contains two distinct proposals. In Chapter II, modifications are made in the ordinary civil law affecting the liability of employers for damages in respect of injuries sustained by their workmen; these clauses will operate only in actions before the ordinary civil courts. The main part of the Bill makes provisions for workmen's compensation and sets up special machinery to deal with claims falling under this category.

Both parts of the Bill, however, apply to the same classes of workmen. If the scope of the employer's liability clause was made wider than the scope of the workmen's compensation provisions, there would be considerable danger of a great increase in litigation. The clauses included are those whose inclusion was recommended by the committee and are specified in Schedule II. Two criteria have been followed in the determination of the classes to be included:

- (a) The Bill should be confined to industries which are more or less organised.
- (b) That only workmen whose occupations is hazardous should be included.

The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in

certain limited circumstances for disease. The actual rates of compensation payable are based on the unanimous recommendation of the committee. They are in every case subject to fixed maxima, in accordance with the committee's recommendations. It should be remembered, however, that the more highly paid workmen will be enabled, in cases to which the employer's liability clauses will apply, to obtain damages on a scale considerably excess of the maximum fixed for workmen's compensation. A consistent endeavour has been made to give as little opportunity for disputes as possible. Throughout the Bill, in the definitions adopted, the scales selected and the exceptions permitted, the great aim has been precision, in order that in a few cases as possible should the validity of a claim for compensation or the amount of that claim be open to doubt. At the same time, on unanimous recommendation of the committee, provision has been made for special Tribunals to deal cheaply and expeditiously with any disputes that may arise and generally to assist the parties in a manner which is not possible for the ordinary civil courts.'

7. From a perusal of the above Objects and Reasons it would be evident that the Act has been promulgated for the benefit of the workmen and a liability has been fastened on the employer. This liability has to be with reference to the date when the amount has become due. If this interpretation is taken that on the death of dependant the liability of the employer ceases, it would be contrary to the purpose for which the Act has been promulgated and would not suppress the mischief or advance the remedy and, on the contrary, would be contrary to the spirit of the Act. Section 3 of the Act provides for employer's liability for compensation. Section 4 has specified the amount of compensation. The compensation which has been specified under Section 4 is to be paid when it becomes due in accordance with the provisions of Section 4A. Under Sub-section (1) of Section 4A the compensation shall be paid as soon as it falls due. Sub-section (2) provides that in cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts. In accordance with the provisions of Sub-section (3) the employer in default is liable for payment of interest if there is default in making the payment of compensation. In Section 10 the provisions for the notice and claim have been given. The Full Bench of the Madras High Court in the aforesaid case has also taken assistance of the provisions of Section 8(4) which provide that if no dependant exists the Commissioner shall repay the balance of the money to the employer by whom it was paid. This provision has been interpreted to mean that if the dependant ceases to exist, the amount is refundable. I am of the view that this provision refers to the date on which the amount has become due and payable by the employer and if on that date no dependant exists, only then the employer is entitled to the refund of the money but not in a case where there is a dependant on the date and the amount became due and he / she subsequently expires. The provisions of Section 10A provide that the employer is liable to deposit the compensation within 30 days of the service of notice. Section 28 provides that were the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of half-monthly payment or otherwise or where any compensation has been so settled as being payable to a woman or a person under a legal disability, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner. The registration of agreement is in the discretion of the Commissioner who may refuse to register it if the amount mentioned therein is inadequate or the said agreement has been obtained by fraud or undue influence or other improper means. If the full amount in accordance with the agreement has been paid to the dependant and the negative clause of this section is not applicable, the Commissioner was under obligation to register the said agreement and it cannot be said that in a case where the agreement has been entered into and the matter is pending with the Commissioner the amount is refundable to the employer in the case of subsequent death of dependant.

8. Another question which arises is that even after registration of the agreement if the dependant dies, whether the payment of compensation in respect of an agreement which has been registered is not enforceable under law. Section 8 has provided that any direct payment by the employer shall not be adjusted towards the payment of compensation. This provision is again not for the benefit of the employer who may not exercise any undue influence and, therefore, a proper safeguard has been made that the payment has to be made by way of deposit to the Commissioner.

9. Assistance has also been taken by the Full Bench of Madras High Court from the provisions of Section 23 of the Act which has conferred the powers of the civil court on the Commissioner for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and compelling the production of documents and material objects. The power which is referred to in Section 23 is the power of the Commissioner for the purposes mentioned therein and for that purpose the Commissioner is considered to be a civil court. This power does not come in conflict with the rights of the dependant or any legal representative of the dependant who is entitled to compensation in accordance with other provisions of the Act. No assistance can be taken from this provision with regard to the right of the dependant or his legal representative in respect of compensation. So is the position with regard to the provisions of Rule 41 of the Workmen's Compensation Rules which were made under the provisions of Section 23 and are referable to the powers of the Commissioner under the Act.

10. In *Pratap Narain Singh Deo v. Shrinivas Sabata*, (1976-I-LLJ-235) it has been observed by the Apex Court that the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. The plea that the compensation was not due till the Commissioner's order was passed under Section 19 was negatived. On the basis of the aforesaid judgment it can be said that the act of determination of liability under Section 19 is not the determining factor for the liability of the employer which may be at the later stage.

11. In *Madho Singh, In re;*, 1980 MPLJ 261, it was held that the heirs of a deceased dependant can claim the amount deposited as compensation even though the dependent might have died before he could file a claim before the Commissioner and before the compensation could be awarded to him. When a dependant dies during the pendency of the claim filed by him, he or his legal representative can execute the claim for compensation as has been held in the case of *Pasupati Dutt v. Kelvin Jute Mills*, AIR 193 7 Cal 495. The Calcutta High Court in the aforesaid case came to the conclusion that on the death of a workman through some accident arising in the course of his employment, a right to the compensation payable by the employer under the Act vests in his dependant or dependants actually existing at the time of his death; and if such dependant dies before any claim to such compensation is made or investigated, the right passes on to his heirs or legal representatives as they are included in the word 'dependant' in section 8. According to this judgment, the word 'dependant' was held to be comprehensive to include the legal representatives if the dependant dies and the right of the dependant would continue through his legal representative in that case. In *St. Joseph's Automobile and Mechanical Works v. Maria Soosai Pillai*, AIR 1953 Mad 206, it was held that the dependency is with reference to the date of the death of the workman and the fact that at a future date the father might have to depend upon the son is not a relevant consideration.

12. It may also be observed that the English Workmen's Compensation Act, 1925, provides that at page 524 of 1977 ACJ:

'Where a dependant dies before a claim under this Act is made, or if a claim has been made before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman.'

13. The other provisions specifically exclude the right of legal representative of the dependant. The Full Bench of the Madras High Court in the case of *B.M. Habeebullah*, (supra) reproduced the provisions of English law which was existing at the relevant time and which was as under : (P. 323)

'Any reference to a workman who has been injured shall, where the workman is dead, include a reference on his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.'

14. It was on the basis of this provision which included the word 'legal personal representative' which was found absent in the Act that the decisions of the Calcutta, Andhra Pradesh and Bombay High Courts were

dissented. In my opinion, the word 'legal representative' does not assist in any manner to come to the conclusion that the word 'dependant' should be construed as the dependant at the time of distribution of the amount under Section 8 of the Act and if there is no dependant at the time of distribution the legal representatives of the dependant would have no right. Once a right is crystallised and vests in the dependant, it becomes a civil right and the legal representative is entitled to step into the shoes of the dependant.

15. The provisions of the Act contemplate lump sum amount by way of compensation on accident / death. The said amount is not depending on any subsequent event but is relating to the rights of the person, i.e., dependant, to claim it in accordance with law. Once the amount is fixed in lump sum the only thing that remains to be done is to see whether the claimant is a dependant within the meaning of Section 2(1)(d) of the Act or not. The death of the dependant is not the factor by which a claim filed by the dependant becomes non est. There is no specific provision in the Act which disentitles the dependant by subsequent event. To be more elaborate if a workman has died and the claim is filed by the sole dependant, as the claim could not be decided for a number of years and during that period the dependant had incurred liability / expenditure for maintenance in the expectation of the claim, then whether it would be justified to deny the claim to the legal representative because of the death of the dependent subsequently. The provisions of the Act are beneficial for the labourer and his family and, therefore, they have to be interpreted in the manner so as to advance the object rather than putting any obstruction in the implementation of justice.

16. The submission of learned counsel for the respondents is that the position with regard to the wife of the claimant has to be considered as on the date of accident and on that date the mother was alive. It has further been submitted that under the scheme of the Act lump sum amount has to be paid in case of permanent disablement and death to the dependant. The right to claim compensation accrues on the date of death of the deceased. It is not depending on any other factor. If there was a dependant then he has a right to claim the amount of compensation. If during the pendency of the claim or even thereafter the dependant dies, the right of he dependant could be claimed by his legal representatives. Reliance has been placed on the case of P.R. Ram v. Deputy Labour Commissioner, 1985 ACJ 728 (Kerala), wherein a Division Bench of the Kerala High Court has held that the position as obtaining on the date of death of the workman is to be considered in deciding who are the dependants and how the amount awarded is to be distributed and subsequent events and changes are not material. Compensation could be claimed by the dependant. If the workman has expired the right to claim compensation is in respect of category of persons who are defined in Section 2(1)(d) of the Act. No other persons has a right to claim the same. Once a claim petition has been made by the dependant, then irrespective of the death of any one or sole dependant during the pendency of the proceedings or even after the award will not change the right of the dependant to claim compensation which was existing on the date of accident. In view of this position of law, I am of the view that the right existing on the date of death / accident of the workman is the only criterion for claiming the compensation and, therefore, the mother of the deceased who filed the claim petition was entitled to the compensation in accordance with the provisions of the Act. If she has died the amount could be claimed by her legal representatives. The third submission of Mr. Asopa that the wife of the deceased was also alive and, therefore, no proper apportionment has been made in accordance with the Act has no substance because notice was issued to her and she has not cared to appear. Respondents have filed affidavit that she has remarried and was not interested to claim compensation.

17. Mr. Asopa has further submitted that the claim petition abated before the Commissioner since the mother expired. As observed above, the legal representatives were contesting the claim on her behalf. I am of the opinion that the claim petition has not abated. This objection, therefore, has no force.

18. The last objection raised by the learned counsel for appellant is that the workman was getting Rs. 17/- per day whereas the Commissioner has determined the amount of the claim at the rate of Rs. 28/- per day. In this respect detailed discussion has been made by the Commissioner and the finding has been given to this effect that there is fabrication of record by the appellant. In these circumstances it is not proper for this court to interfere with the said finding and this submission of learned counsel for the appellant has no force.

19. In the result, the appeal is partly allowed only to the extent that Ram Karan, major brother of the deceased, would not be entitled to compensation and only the mother would be entitled to the same. The amount may be given to her legal heirs in accordance with law.

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