

Hastimal Vs. A. Arjunan

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Court : Chennai

Decided On : Nov-01-1991

Reported in : I(1993)ACC235; 1992ACJ762; [1992(65)FLR266];
(1993)IILLJ55Mad; (1995)IILLJ418Mad; (1992)IMLJ547

Judge : S. Janarthanam, J.

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

Appeal No. : A.A.O. No. 830/1985

Appellant : Hastimal

Respondent : A. Arjunan

Advocate for Def. : R. Ganesan, Adv.

Advocate for Pet/Ap. : P.R.P.K. Venkata Subramanian, Adv.

Disposition : Appeal allowed

Judgement :

1. Bensali Chemicals, having its office at No. 26, Nainiappa Naicken Street, Madras-3, it is said, is a partnership firm, of which Mr. Hastimal is a partner. One A. Arjunan is said, are to be paid on daily basis and daily wages amounts to Rs. 12. However, the said employee, calculating the wages he earned in a month, fixed the same only at Rs. 288 thereby indicating that he had been provided with

work for a period of 24 days in a month.

2. On October 4, 1982, while he was engaged in loading nitric acid cans in a vehicle, an accident happened, in the sense the nitric acid in the cans spilling into his left eye, causing burning sensation. Despite treatment, he is said to have lost vision in his left eye. Consequently he filed an application seeking compensation for such loss of vision in his left eye in a sum of Rs. 7,560 before the Commissioner for Workmen's Compensation I, Madras-6 (The Deputy Commissioner of Labour-I, Madras (6)).

3. Though the firm stated in its counter that the said Arjunan was employed in the firm on daily wages, yet the claim had been resisted by contending that the loss of vision he sustained in his left eye, is not due to any accident of spilling of nitric acid in his left eye, arising in the course of his employment; that even otherwise, the loss of vision is not due to such spilling of nitric acid; but due to other causes and that therefore it is, he is not entitled to any compensation.

4. The parties, in proof of their respective claims adduced evidence. The firm examined one of its partners, Hastimal as R.W. 1 while the workman A. Arjunan examined himself as A.W. 1 besides examining the doctor D. K. Balachandran, who treated him and gave the certificate for the injuries he sustained in the accident, as A.W. 2.

5. The Commissioner for Workmen's compensation on consideration of the materials, awarded a sum of Rs. 13,440 on August 26, 1985 as compensation to the injured workman, directing the firm represented by its partner, Hastimal to pay same within thirty days from the date of the order. Aggrieved by the said order, the firm came forward with present action.

6. Learned counsel for the appellant firm would strenuously contend that the Commissioner for Workmen's Compensation committed a grave error on facts by the perverse appreciation of the materials available on record, besides error of law, by not giving a proper legal fitment to the facts of the case on hand and therefore it is that the impugned order deserves to be set aside. In amplification order deserves to be set aside. In amplification of the argument, he would submit

that the injured workman can by no stretch of imagination be stated to be a workman within the four corners of the definition of 'Workman' as adumbrated under Section 2(1)(n) and Schedule II of the Workmen's Compensation Act, 1923 (for short 'the Act'). He would further submit that the awarding of compensation in a sum of Rs. 13,440 is not backed by valid reasons, in the sense of the order not indicating the method of computation referable to the relevant provisions of the Act.

Learned counsel appearing for the respondent workman however repel such submissions.

7. To the submission of learned counsel for the appellant, revolving on the question of the injured workman not to be constructed as a 'workman' within the provisions of the Act, I am unable to affix my seal of approval, on the facts and circumstances of the case. A cursory perusal of the silent provisions adumbrated under Section 2(1)(a) and the enumerated category of persons in Schedule II of the Act would clearly indicated that the injured workman is definitely coming within the four corners of the aforesaid provisions as a 'workman'. This apart, as already indicated, the appellant/firm did not seriously challenge the status and character of the injured as a workman in its counter.

8. The further vexed question that arises for consideration is as to whether the loss of vision in he left eye of the workman was occasioned as a result of an accident of spilling the nitric acid in his left eye, arising in the course of his employment. On this aspect of the matter, there is the testimony of the injured, as A.W. 1, who, in turn, would consistently depose that in the process of loading cans containing nitric acid, process of loading cans containing nitric acid, his left eye filled with nitric acid spilling from such cans and consequently he was forced to take treatment for such an injury caused to his left eye.

9. Of course, this aspect of the case or worker is seriously challenged by the firm, which in turn would examine one of its partners, as R.W. 1, who in turn, would simply state that no such accident happened on that relevant date. Such a bald denial of accident not having happened on the date in question, cannot at all be countenanced, on the face of the clinching testimony of the workman as A.W. 1

who had taken treatment with the doctor A.W. 2 who, in turn would categorically state that he treated him for the spilling up nitric acid in his left eye causing burning sensation and despite best of treatment given, his vision in the left eye could not be restored. He also issued a certificate, Ex. A-2, regarding the disability sustained by him. He would also state that the worker was an inpatient in the hospital for nearly about two months. With regards to the nature of the injury, he would say that it is grievous in nature and as respects the loss of percentage of disability, he will estimate it at 50%. On the face of such evidence available on record, it cannot be stated that there was perverse appreciation of the evidence available on record by the Commissioner for Workmen's Compensation calling for interference.

10. The other question that falls for consideration is the computation of the quantum of compensation for the injury sustained by the workman. It is to be noticed here that the workman himself quantified the amount of compensation he would be entitled to at Rs. 7560. As already referred to, the Commissioner for Workman's Compensation awarded a sum of Rs. 13,440 while quantifying compensation in such a sum, he would simply refer to the loss of such a sum, he would simply refer to the loss of earning capacity of the injury he sustained is grievous in nature. Barring this, he did not indicate in his order, how he was able to compute the amount if compensation at Rs. 13,40 as against the compensation claimed by the workman to the tune of Rs. 7,560.

11. The fact that the workman claimed a compensation of Rs. 7560 by itself is not sufficient to dub the order of the Commissioner, as being perverse, in the sense of granting compensation in a sum much more than what the workman had claimed. A poor workman who committed a mistake in claiming compensation in a sum less than that to which he would be legitimately entitled, will not however debar the Commissioner from awarding a compensation in a sum, to which he is legitimately entitled to, under the provisions of the Act. But then, the fact remains that the commissioner was not at all empowered to grant compensation in a sum not warranted by the provisions of the Act. It is to be mentioned here that the Schedule I of the Act contains two parts, Part I containing list of injuries deemed to result in permanent total disablement and Part II containing list of injuries deemed to result in permanent partial disablement. There are six entries under Part I and

48 entries under Part II. The entries in both the categories enumerate the various kinds of injuries susceptible of being sustained, as a result of the accident arising in the course of employment.

12. Learned counsel for the respondent would submit that the injury sustained by the injured workman would come under Entry 4 of Part I of Schedule I. This submission of learned counsel cannot at all be countenanced, on the facts and circumstances of the case. The description of the injury listed under Entry 4 is to the following effect.

'Loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential.'

13. The percentage of loss of earning capacity-in the third column-for such injury is 10%

14. A cursory perusal of the description of the injury, as given above, would point out in no uncertain terms that loss of sight must be to such an extent as to render the claimant worker unable to perform any work, for which eye sight is essential, in the sense of more or less a complete loss of vision of both the eyes. It is not a complete loss of vision of both the eyes. It is not at all the case on hand. Even according to the injured workman, he lost the vision only in his left eye. The evidence of the doctor A.W. 2 is also to the same effect. Of course, the doctor would refer to the injury he sustained as to grievous nature. That such an opinion emerged from the doctor is obviously as result of the injured workman having been an in-patient in the hospital for more than two month's, as deposed to by him. the injury sustained by the workman, if at all, would come under Entry 26 of Part II of Schedule I and the injury described under that entry is to the following description :

'Loss of vision of one eye, without complications of disfigurement of eyeball, the other being normal.'

15. If we consider the evidence of the doctor, A.W. 2 his evidence would unmistakably point out that the injured workman is having full vision on his right eye and what all he has stated was that he lost vision on one of his eyes, namely,

left eye. He did not even demur that there was any disfigurement of the eye ball. In such circumstances, one can be doubly certain that the injuries sustained by the worker is one, which is falling within the four corners of Entry 26 of Part II of Schedule I. The percentage of loss of earning capacity for such an injury is given in the third column as 30%.

16. Section 4 and Schedule IV provide the necessary method with the percentage of loss of earning capacity, as had been provided in the third column of Part II of Schedule I, as guidelines for computation of the amount of compensation, for the injury sustained by the workman in the course of his employment.

17. Section 4(1)(c), dealing with the computation of permanent partial disablement, which is relevant and necessary for our purpose is in the following terms :

'4. Amount of compensation. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :

.....

(c) Where permanent partial disablement results from the injury.

(i) in the case of an inquiry specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein, as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury'

18. Schedule IV giving the clue for computation of compensation for permanent total disablement to a workman having monthly emoluments of wages, ranging from Rs. 60 to Rs. 1,000. The injured workman, in the case on hand, as already stated, was having a monthly emolument of Rs. 288. For the salary group of workmen ranging from Rs. 200 to Rs. 300 per mensem, the amount of compensation payable for permanent total disablement is fixed at Rs. 25,200. As

already referred to, the injured workman, having sustained an injury on his left eye, resulting in the loss of vision on one eye, the percentage of loss of earning capacity is 30% under Entry 26 of Part II of Schedule I. The compensation awardable to the injury sustained by him is to be calculated at 30% of Rs. 25,200 which will work out to Rs. 7,560, the amount exactly claimed by the workman in his petition. As such, the compensation awarded by the Commissioner for Workmen's Compensation a sum of Rs. 13,440 is not at all sustainable and the same has to be modified in a sum of Rs. 7,560 and accordingly the compensation modified in the said sum.

19. The civil miscellaneous appeal is disposed of accordingly, but in the circumstances, I make no order as to costs.

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