

Sambasiva Chetti Vs. Mannankatti

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Court : Chennai

Decided On : Apr-03-1959

Reported in : (1959)IILLJ630Mad

Judge : Ramachandra Ayyar, J.

Appellant : Sambasiva Chetti

Respondent : Mannankatti

Judgement :

Ramachandra Ayyar, J.

1. This is an appeal against an order under Section 30 of the Workmen's Compensation Act (which would be referred to hereafterwards as the Act) of the Commissioner for Workmen's Compensation, Madras, awarding compensation to the respondent for the fatal injury sustained by his wife, Vellachi, in the course of her employment. The employer is the appellant. The deceased was one of the coolies employed in the construction of a house by the appellant. The construction of the building began several months previous to the accident and by June 1957 the ground floor had been completed and a terrace was in the process of being put up. On 17 June 1956, the work on the terrace was proceeding. The deceased Vellachi was engaged in bringing water for mixing up the jelly for the construction. It is now found that the place where the jelly was being mixed up was just about a foot away from the unprotected edge of the terrace. The deceased, after pouring

water on the jelly evidently turned back, slipped and fell down a height of 20 feet. Death followed instantaneously. The respondent, the husband of the deceased, who was himself a disabled person, applied to the Commissioner, Workmen's Compensation, under Section 30 of the Act, for compensation on the footing that he was a dependant on the deceased.

2. The claim was contested by the employer on several grounds. The Commissioner held that the deceased was a workman within the meaning of the Act, that the jelly was mixed near the edge of the first floor of the building, that the deceased sustained the injury in the course of her employment which was not of a casual nature and awarded a compensation to the respondent in a sum of Rs. 900.

3. The employer thereupon filed this appeal under Section 30 of the Act against the order awarding compensation. The appeal was filed in this Court on 1 October 1958. The memorandum of appeal was not accompanied by a certificate by the Commissioner to the effect that the appellant had deposited with him the amount payable under the order appealed against. This is required to be done under the proviso to Section 30 of the Act. This defect was pointed out by the office of the Registrar when the papers were returned to the advocate for the appellant on 31 October 1958. The advocate for the appellant represented the appeal on 3 November 1958 and so far as the requisition referred to above was concerned he stated thus: 'As and when this appeal is passed and about to be posted, this will be complied and receipt produced.' The officer did not accept this to be sufficient compliance of its previous return and made a fresh return of the papers. Thereupon the employer made the deposit with the Commissioner on 10 December 1958, obtained a certificate to that effect and enclosed the same in the appeal memorandum and represented the appeal. It must be stated that if the appeal were deemed to be filed on 10 December 1958 it would be barred by limitation.

4. Mr. Punyakoti Chetti, the learned advocate for the respondent, has taken a preliminary objection as to the maintainability of the appeal on the ground that the original presentation was incompetent and that even if this appeal is deemed to

have been presented on 12 October 1958 it should be held to be barred by limitation.

5. It is, therefore, necessary to consider whether an appeal under Section 30 of the Act not accompanied by the deposit required under the proviso to that section could be deemed to have been validly presented. Section 30(1) states:

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 . . . ;

Provided that no appeal 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.

6. The terms of the proviso prohibit the appeal and it is in a mandatory form. The presentation of the appeal without the requisite deposit with the Commissioner of the amount awarded would render the presentation itself incompetent. It was observed by Sarojoo Prasad, J., in *Ramnivas v. Mariam* : AIR1951 Pat260 :

It is doubtful whether when an appeal has been filed within the period of limitation allowed by law it would be time-barred merely because it is not 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. It says that no appeal by an employer shall lie unless a certificate is given. In other words, if the certificate is not produced, at some stage before the hearing of the appeal, the appeal will not be entertained.

The learned Judges, however, did not rest their conclusion in that case on this question as they were of opinion that there was sufficient ground for condoning the delay in filing the certificate. The question, however, directly came up for consideration in *Bhurangya Coal Company v. Sahabjan* 1957 L.L.J. 522. It was held in that case that the proviso to Section 30(1) of the Act on its true construction

required that the certificate should be filed along with the memorandum of appeal as an essential part thereof and that an appeal as contemplated by it could not be said in law to be an appeal unless it was accompanied with the aforesaid certificate of the Commissioner. The learned Judges held that the filing of a memorandum of appeal could not by itself amount in law to a formal presentation of an appeal unless the memorandum of appeal was accompanied with the certificate referred to in the proviso. I am of opinion that the decision of the Bench referred to above is in conformity with the terms of the section to which I made reference. By way of an analogy I may refer to the provisions of Section 69 of the Partnership Act, There the registration of a firm is a condition precedent to a right to institute a suit and it has been held that a court could have no jurisdiction to proceed with the trial of the suit when the conditions precedent have not been fulfilled. In *Ponnuchami v. Muthusami* I.L.R. 1942 Mad. 355, a suit was filed by the members of an unregistered firm. Subsequent to the institution of the suit the firm was registered. The question arose whether the subsequent registration could remedy the initial incompetence of the suit. The learned Judges held that the registration of the firm was a condition precedent to the right, to institute a suit and that the Court had no jurisdiction to proceed with the trial of the suit when the condition precedent had not been fulfilled and that the subsequent registration of the firm would not put the suit on a proper basis. I may, however, refer in this connexion to the decision in *Ramakrishna Nadar v. Ponnayya Thirumalai Vandaya Thevar* 69 M.L.J. 791, In that case the plaintiff first applied for leave to sue in forma pauperis but that application was dismissed with costs of the respondent thereto. The plaintiff thereupon instituted a suit after paying court-fee but he failed to pay the costs of the pauper petition to the defendant first before the institution of the suit but paid it only subsequent to the institution.

7. Order XXXIII, rule 15, of the Civil Procedure Code states thus:

An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave

to sue as a pauper.

It was contended in that case that as the costs directed on the pauper application was not paid before the institution of the suit the suit could not be maintained. The learned Judges held that the suit although not properly presented on the date of this presentation by reason of the fact that the condition precedent had not been complied with, it should be deemed to have been presented on the date when the costs were actually paid. Applying that principle, it could be held in the present case that the appeal could be deemed to be properly presented only on 12 October 1958. By that date, however, the time limited by Section 30 for filing the appeal had expired. There is no application before me for excusing the delay in the presentation of the appeal. In the circumstances, I have no alternative but to dismiss the appeal as Incompetent.

8. Mr. Muthukumaraswami contended that the appellant was not an employer and so restriction as to the right of appeal contained under Section 30 would not apply to him and that the appellant would be entitled to present the appeal even without making the deposit. I have already referred to the provisions of Section 30. That no doubt says that in the case of an appeal by an employer under that section, there should be a certificate by the Commissioner that the amount awarded under the order appealed against was deposited with him. The term 'employer' has no doubt been defined under the Act. The contention of the learned advocate is that as the appellant would not come within the definition of the term 'employer' the deposit could not be insisted upon. I am unable to accept that argument. The proviso to Section 30 refers to an employer who files an appeal. That would include an employer who contended before the Commissioner that he was not an employer but was held to be one by that authority.

9. Even assuming that the appeal is maintainable, I am not satisfied that the appellant had any case on the merits. The contention of the learned advocate for the appellant is that the deceased was not a workman within the meaning of the Act, because she was

(1) a casual worker and

(2) she was not employed in connexion with the employer's trade or business.

The term 'workman' has been defined in the Act under Section 2, Sub-clause (n). So far as the portion material for this case is concerned, it runs as follows:

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

From the above it is clear that two conditions should be satisfied before a person who would otherwise be a workman could be excluded from the definition, viz.:

(1) the employment must not be casual, and

(2) he must be employed in connexion with the trade or business of the employer.

10. In *Periyakkal v. Agent, South India Railway Company, Ltd.* 58 Mad. 804, by Curgenven and King, JJ., held that a person, in order to be excluded from the definition of 'workman' under Section 2(n) of the Workmen's Compensation Act, must not only be employed as of a casual nature but also one who is employed otherwise than for the purpose of the employer's trade or business and that 'both the classifications should be present together.

11. As regards the first contention urged by the learned advocate for the appellant, the finding of the Commissioner is that Vellachi was not a casual labourer. As I stated above, the building operation had been going on for quite a long time for a period of more than seven months. It is also found that work in the building was going on regularly though with occasional breaks for five or six days due to shortage of material and that on all the days on which there was work in the building the deceased was employed though only as a coolie or a chital. In the circumstances, I cannot agree with the contention of the learned advocate for the appellant that the deceased was only employed casually.

12. The second contention of the learned advocate for the appellant is that the employer had no business in constructing houses, and that, therefore, it could not

be held that the deceased would come within the definition of the term 'workman.' I am not able to accept ' this contention either. It is admitted that the appellant has more than one house and he was building the house only with a view to let it out to tenants. I am of opinion that in such circumstances it should be held that the workman was employed in the course of the employer's business.

13. The next contention of the learned advocate for the appellant is that the latter was not an employer within the definition of the term under Section 2(e) of the Act. Section (e) does not in terms define the term 'employer' but includes certain persons who would not otherwise become employers. The contention is that the deceased was employed by a maistri and there was no privity of contract between the appellant and the deceased as such. According to the appellant, it was the maistri who took the wages from the employer and distributed it amongst the workmen. It was, therefore, contended that the deceased should be deemed to be employed under the maistri and not under the appellant. Building operations are generally done through a maistri, who recruits the labourers and in a way controls their work. But that would not make the maistri the employer. In the present case it is admitted that the brother-in-law of the employer supervised the construction of the building. Under these circumstances, I am of opinion that the appellant would be an employer within the meaning of Section 2(e). In *Arumugam v. Nagammal* A.I.R. 1949 Mad. 462, it was held that in a case where workman was employed by a maistri on behalf of the employer the former would become a workman within the meaning of Section 2(n) of the Act and would be entitled to claim compensation in respect of an accident sustained in the course of the employment. I agree with Mack, J., that even though an employer may employ workmen through an agency of a maistri, the employee would be workman within the meaning of Section 2(n) of the Act. I am therefore of opinion that the Commissioner for Workmen's Compensation was within his jurisdiction in entertaining the claim and making an order for compensation. No further point has been argued before me. The appeal, therefore, fails and is dismissed with costs.