

Management of Devi Press Vs. S. Selvaraj

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Court : Chennai

Decided On : Jun-12-2000

Reported in : [2001(88)FLR159]; (2001)ILLJ137Mad

Judge : K.P. Sivasubramaniam, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3, 4A and 4A(3);
Workmen's Compensation (Amendment) Act, 1995

Appeal No. : C.M.A. No. 1232/1993

Appellant : Management of Devi Press

Respondent : S. Selvaraj

Advocate for Def. : M.I. Meera Sahib, Adv.

Advocate for Pet/Ap. : Meenakshisundaram, Adv.

Disposition : Appeal partly allowed

Judgement :

K.P. Sivasubramaniam, J.

1. This appeal is directed against the award of the Deputy Commissioner for Workmen's Compensation, Madras, in W.C.No. 62 of 1993. The management of Devi Press being the respondent before the Deputy Commissioner is the appellant

before this Court.

2. According to the workman/respondent herein, he was employed by the appellant as off-set machine operator with effect from May 22, 1982 on a monthly wages of Rs. 2,200. On October 10, 1982 while he was working on the off-set machine papers got struck up in the paper cylinder of this machine at about 1.30 a.m. Therefore, he stopped the machine and while he was removing the papers from the paper cylinder by pressing a button cylinder started rolling at full speed and with the result both his hands were crushed in between the paper cylinder. The manager came to the spot of the accident and took him to the Government Stanley Hospital, Madras. After treatment both his hands were amputated at higher sites resulting in 100 percentage of loss of earning capacity. The applicant and his wife approached employer for payment of compensation for the personal injury. Though the employer indicated a sum of Rs. 50,000 would be paid as compensation, the appellant did not pay any amount nor deposited as required under Section 4-A(2) of the Workmen's Compensation Act (hereinafter called 'the Act'). With the result, the workman made a total claim of Rs. 1,03,990 towards compensation and a sum of Rs. 51, 995 towards penalty under Section 4-A of the Act.

3. In the counter filed by the opposite party, it was contended that the applicant as an off-set machine operator was fully aware that his duty was only supervisory in nature involving attention to quality of production by adjusting ink levels, perfect registration etc. He also knows that whenever there was any trouble or defect in the running of the machine under his charge, his obligation is to make requisition to the maintenance department for rectifying the defects instead of placing himself in a position where his duties did not call for his meddling with the sophisticated machine. Having admitted that papers were not delivered through the paper cylinder and he stopped the machine by pushing the stop button of the machine, he should have immediately called the services of the maintenance department to rectify the defects and ensure the refunctioning of the machine. Therefore, he had taken the risk of tampering with the machine which was not part of his duty. It is true that the opposite party out of humanitarian consideration, came forward to render help to the applicant in its discretion, but the claim under the Workmen's

Compensation Act cannot be accepted by the opposite party.

4. On a consideration of the said contention and the evidence, the Deputy Commissioner held that the accident had resulted only in the course of claimant having performed his duties and a sum of Rs. 1,03,990 was awarded towards compensation and a sum of Rs. 4,680 was awarded towards interest. In addition to the above amounts, a sum of Rs. 51, 995 was awarded as penalty and with the result a total sum of Rs. 1,60,665 was awarded as compensation.

5. In this appeal, learned counsel for the appellant/management has raised mainly two grounds. Firstly, while the claimant was discharging his duties assigned to him, he had invited the accident by his own imprudent conduct. Secondly, for the imposition of penalty, there was no proper issue of notice as contemplated under the Act and therefore, the levy of penalty was liable to be set aside.

6. In support of his submission that the claimant was acting imprudently, learned counsel has asserted that it was not part of the duty of the claimant to have attempted to set right the machine. If there was any problem in the machine, he should have required the services of the Maintenance Department and therefore the claimant cannot be heard to complain that he had incurred employment injury.

7. Reference is made to the judgment of the Supreme Court in *Mackinnon Mackenzie & Co. v. IM. Issak* : (1970)ILLJ16SC and reliance is placed on the observation that the words 'arising out of employment' should be understood to mean that in the course of employment injury as resulted from some risk incidental to the duties of the service assigned to the workman. The expression 'arising out of employment' should be understood in the context of the assignment given to the worker.

8. I have considered the submissions of both sides with reference to the question as to whether the injuries were sustained by the claimant in the course of his duties or not. It is not disputed that the claimant was working as a miller in the offset machine. In his evidence, the claimant has clearly stated that whenever there was any obstruction in the movement of paper in the machine, he would open the safetyguard platform and after removing the papers he would replace the

safetyguard and restart the machine. He has also denied the suggestion in the cross-examination that it was not part of his duty to remove the safeguard. The evidence of P.W. 1 is believable having regard to the nature of the job he was performing. It cannot be disputed that the paper got stuck up in the machine very often and that on every such occasion, operation cannot be expected to wait for the maintenance worker. It is also admitted by the witness for the management, R. W. 1, that the claimant has to fix the flat cylinder and ink of the blades and run the machine and after the paper is delivered, he has to adjust externally for proper registration. He must also adjust ink screws and for performing the said duties he has to sit on the safety guard platform. It is also stated by him that whoever might open the safety guard platform the machine would automatically stop and will not run.

9. The above evidence clearly establishes that the claimant was performing a series of duties which are entrusted to him and there was a failure of the machine in the sense that the machine should have stopped when the safety guard platform had to be removed. On the other hand, in spite of having removed the safety guard platform, the machine had started running which could not have been expected by the claimant. Therefore, the circumstances only suggest that there was some inherent defect in the machine which the claimant could not have visualised.

10. Therefore, I do not find any error in the findings of the Commissioner as regards the claimant having suffered employment injury.

11. With reference to the imposition of penalty, learned counsel for the appellant, refers to the provisions under Section 4-A of the Act. According to learned counsel for the appellant, no notice was given before the imposition of penalty and hence the levy of penalty cannot be justified. Reference is made to the judgment of the Gujarat High Court in Sakinabibi and Anr. v. Gujarat State Road Transport Corporation 1995 III LLJ (Suppl) 508 (Guj). It was held that imposition of penalty under Section 4-A(2) gave raise to a triable and arguable case. Learned counsel relies on this judgment for the proposition that proper opportunity should be given to the management to let in evidence to show that his conduct did not deserve

imposition of penalty.

12. Learned counsel also relies on a judgment of a Division Bench of Kerala High Court in *Rajan v. Subramonian* 1993 III LLJ (Suppl) 890 (Ker). In that judgment, the Division Bench held that it would be appropriate to frame an issue with reference to the liability of penalty under Section 4-A(2) of the Act. It would be a matter of fair play and fair procedure relating to the principles of natural justice. Though Section 4-A(2) of the Act on its terms did not contain any provision for framing an issue or for hearing an employer before imposing penalty, or regarding its quantum, that was a requirement of natural justice.

13. Learned counsel for the respondent however, refers to the judgment of the Supreme Court in *Pratap Narain Singh v. Shrinivas*, : (1976)ILLJ235SC whereunder the Supreme Court held that in a case of personal injury caused to a workman by an accident which arises out of and in the course of employment, the employer becomes liable to pay compensation as soon as the personal injury was caused to the workman. It was the duty of the employer to pay compensation and where he fails to do so and makes no provisional payment he was liable to pay interest and penalty. In that judgment, the Supreme Court does not deal with the requirement of notice to be given to the management. The judgment only emphasises the basis for inflicting the penalty and does not deal with the issue of notice.

14. Reference was also made to a judgment of Gujarat High Court in *Puriben Nagabhai v. Nathabhai* 1999 L.I.C. 2117. Reliance is placed on the observation that if the claim was contested by the management and after fullfledged enquiry and after hearing the Commissioner did not award penalty the order of the Commissioner was not proper. In that judgment also there is no discussion about the issue of necessity to issue notice to the management.

15. In this context, on the very first principle, relating to imposition of penalty, it would be proper to hold that any person against whom any penalty is contemplated, proper notice should be given to him. Imposition of penalty depends on various circumstances and the opposite party is entitled to let in proper evidence in order to substantiate that his conduct does not deserve infliction of

penalty. Such an opportunity would be available only if specific notice is given and he is put on notice and defence as regards the claim of penalty. In fact Section 4-A of the Act as it stands today, Sub-sections (3) and (3-A) have been recast by amending Act 30 of 1995 whereunder a proviso had been added to Sub-section (3) to the effect that an order for payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed. The said provision being procedural and one which relates to the right of the management to be heard before the imposition of penalty and thus involving procedure relating to natural justice, the proviso should be applied also to cases which arose before 1995. The proviso has embodied only the basic and well accepted principles of natural justice. In the show-cause notice given by the Tribunal to the management, the management has not been called upon to explain against the imposition of penalty.

16. Therefore, I am inclined to hold that the management is entitled to proper notice as against the imposition of penalty and also proper written statement in the said context and also adduce oral evidence in the said context.

17. Therefore, I am inclined to hold that while confirming the finding of the Commissioner as regards the fact that the claimant had suffered injury in the course of his duty, the order of the Commissioner to the extent of imposing penalty is liable to be set aside subject to fresh opportunity to be given to the management.

18. In the result, the above appeal is partly allowed and the imposition of penalty alone is set aside. The Commissioner will give proper opportunity to the management to show cause against the penalty and proceed further in accordance with law. The proceeding being a matter relating to the year 1993, the Commissioner is directed to dispose of the claim petition in the context of imposition of penalty within three months from the date of receipt of a copy of this judgment. The claimant is entitled to withdraw the entire amount awarded towards compensation less the penalty amount. No costs.