

Manderbhani Colliery Vs. Phulwanti Devi

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Court : Kolkata

Decided On : Sep-10-1997

Reported in : (1999)ILLJ937Cal

Judge : Satyabrata Sinha and ;Bhaskar Bhattacharya, JJ.

Acts : Workmen's Compensation Act, 1923 - Section 30

Appeal No. : Appeal from Original Order No. 204/1993

Appellant : Manderbhani Colliery

Respondent : Phulwanti Devi

Advocate for Def. : Bidyut Kr. Banerjee, Adv.

Advocate for Pet/Ap. : Sudhansu Sil, Adv.

Judgement :

Satyabrata Sinha, J.

1. This appeal under Section 30 of the Workmen's Compensation Act is directed against an Order dated May 18, 1985 passed by Shri B.K. Mitra, Commissioner. Workmen's Compensation, Durgapur wherein and whereunder the said authority has awarded a sum of Rs. 27,000/-

2. We find from the records that this matter was not placed under Order XLI Rule 11 of the Code of Civil Procedure and, thus, no substantial question of law was formulated as is mandatorily required under the proviso appended to Section 30 of the said Act.

3. Having considered the matter and having heard the learned Counsel for the parties, we formulate the following substantial question of law for our decision:

'Whether the Commissioner, Workmen's Compensation, acted illegally in so far as it failed to discuss the materials on record and thereby wrongly decided the jurisdictional fact.'

4. The facts of the matter lie in very narrow compass. The petitioner's husband Mahngu Kahar allegedly died in an accident which took place on January 25, 1977. The fact that the said workman was an employee of the appellant is not disputed. According to the application which is in form 'G', the respondent merely stated that the aforementioned workman died on the aforementioned date arising out of and in course of his employment resulting in his death on the said date accidentally. No details as to how the accident took place had been stated. Although the accident took place on January 25, 1977, the application was filed on July 6, 1982. We would not intend to interfere with that part of the order whereby the delay in filing the said application was condoned. However, it appears that the written statement was filed on behalf of the appellant wherein, inter alia, it was stated:

'He died in the course of employment or out of employment. His dead body was recovered by the Rly. authority on January 26, 1977 early hours near Bhomgarh by the side of the Rly. line'.

5. The appellant further stated that no accident took place in the Colliery on the said date. The appellant examined three witnesses whereas the applicant also examined three witnesses. The applicant merely stated that the concerned workman died on January 25, 1977 due to accident during duty and his wages were Rs. 800/- to Rs. 900/-. A suggestion was given to her that he did not suffer from any accident during duty at the relevant time. P.W.2 was a security guard.

According to the said witnesses on January 25, 1977 he saw him preparing himself for going to duty. He is also not an eye witness of the death. P. W. 3 is a Security guard who was said to be on duty at Magin at 12 A.M. to 8. A.M. He stated that as the workman concerned was present at the time of attendance the concerned workman was on duty. On the other hand, appellant examined the Compounder of Manderbani Colliery who produced the accident Register and stated that there was no entry showing that any accident had taken place on that date nor there exists any entry in the dispensary register. O.P.W. 2 a general clerk who produced attendance register. O.P.W. 3 who is a Personnel Officer stated that there was no accident although the parties adduced evidence, the Workmen's Compensation Commissioner merely arrived at a finding that the workman concerned met with an accident on January 25, 1977 without analysing the evidence and without discussing the materials on record. The question as to whether an accident has taken place or not was a jurisdictional fact. It was obligatory on the part of the learned Commissioner, Workmen's Compensation, to analyse the materials on record so as to arrive at a finding as to whether the Workmen concerned met with an accident in course of his duty. Unless such a finding of fact is arrived at, the said authority will have no jurisdiction to award any compensation. As the Commissioner has not adverted himself to the said relevant question, he must be held to have misdirected himself in passing the impugned order. In this view of the matter, the impugned order cannot be sustained, which is accordingly set aside and the matter is remitted back to the Commissioner, Workmen's Compensation for passing an appropriate order in accordance with law. It will also be open to the parties to adduce any other further evidence before the said authority.

6. It appears from the records that the amount of compensation has been deposited by the appellant in this Court and by order dated June 21, 1989 the respondent was permitted to withdraw 50% of the amount and the rest was directed to be invested by way of Fixed Deposit a/c. in Nationalised Bank, we direct that in the event the respondent succeed, the interest accrued on such investment shall ensure to her benefit. This order shall not however stand in the way of the Commissioner, Workmen's Compensation to award interest in her favour, if he so thinks fit and proper.

7. The Commissioner, Workmen's Compensation, is directed to dispose of the matter within one month from the date of receipt of a copy of this order.

8. There will be no order as to costs.

9. Let the records be sent down to the Court below at the cost of the appellant through Special Messenger and such cost is to be deposited within one week from date.

Bhaskar Bhattacharya, J.

10. I agree.

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