

**B.P. Nandy Vs. General Manager, East India Rly. and anr.**

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**Court :** Kolkata

**Decided On :** Mar-16-1954

**Reported in :** AIR1954Cal453,58CWN488

**Judge :** Chakravartti, C.J. and ;S.R. Das Gupta, J.

**Acts :** Workmen's Compensation Act, 1923 - Section 30 and 30(1)

**Appeal No. :** A.F.O.O. No. 47 of 1953

**Appellant :** B.P. Nandy

**Respondent :** General Manager, East India Rly. and anr.

**Advocate for Def. :** Bhabesh Narayan Bose, Adv. (for No. 1) and ;Phanindra Kumar Sanyal, Adv. (for No. 2)

**Advocate for Pet/Ap. :** Nalini Kanta Mukherjee and ;Jnan Chandra Roy, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Chakravartti, C.J.

1. A preliminary point of some interest has been taken in this appeal which, in my view, should succeed.

2. The appellant is one B. P. Nandy, who was admittedly a contractor under respondent No. 1, the General Manager, East Indian Railway. There was a workman, named Apal Ram, who is respondent No. 2 before us, employed under the appellant and engaged in work which the appellant was doing for the respondent Railway under a contract with that body. The respondent No. 2 suffered a personal injury by accident and claimed compensation from respondent No. 1, the Railway. Thereafter, at the prayer of the Railway, the appellant was brought on the record so that in the event of the workman's claim being allowed an order for indemnity could be passed in his presence under Sub-section (2) of Section 12, if such an order could be passed on the facts of the case.

3. The workman's claim succeeded and the operative portion of the Commissioner's order is in the following terms :

'His claim is decreed for Rs. 420/- plus costs, plus pleader's fee Rs. 10/- against opposite party No. 1. Opposite Party No. 2 is to indemnify, opposite party No. 1 to the extent of the decretal amount.'

The appellant, who has been referred to as opposite party No. 2 in the order I have just read, then preferred the present appeal. He did not deposit the amount of the compensation.

4. The preliminary objection taken on behalf of the workman is that the appeal is not maintainable, inasmuch as, in the absence of a deposit of the amount of the compensation required by the third proviso to Section 30(1) of the Act, no appeal lay from the order passed by the Commissioner. It will be convenient to read at once the proviso relied upon. It runs thus :

'Provided further that no appeal by an employer under Clause (a) 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.'

5. As some argument turned before us upon Clause (a), I shall read that clause as well. It runs thus :

'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.'

6. The appellant contended that the third proviso to Section 30(1) did not apply to the appeal filed by him, inasmuch as it was not an appeal under Clause (a) of the section, but an appeal under Clause (d). The latter clause runs thus : (d) 'an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12.'

7. It was contended that the present appeal being an appeal by a contractor and it being an appeal against an order allowing a claim for indemnity, it did not come under the mischief of the third proviso and could be maintained without the deposit of the amount of the compensation.

8. In order to see whether the appellant's contention is maintainable, it is necessary to refer to some further facts in the case. It appears that both the opposite parties to the workman's application, namely, the Railway and the contractor, took a common ground to the effect that the job which the contractor was required to do in terms of the contract was not the ordinary trade or business of the Railway. This contention was obviously raised in order to avoid the operation of Section 12(1) of the Act, but while the present appellant adhered to it, it was not persisted in by the Railway who gave it up.

No contention, however, was raised by the appellant that even if an award was made against the Railway, he could not, in any event, be ordered to indemnify the Railway Administration in respect of the amount of compensation awarded. Indeed, the very first line of the material portion of the Commissioner's judgment states that there was no issue between opposite party No. 1 and opposite party No. 2. This statement of the Commissioner receives direct support from the eighth paragraph of the appellant's written statement where it was said that in case a decree was passed against the Railway, he agreed to indemnify the Railway to the extent of the decretal amount.

9. From the structure of the case which I have outlined above, it ought to be clear that there was no triangular fight in the case as between the Railway, the present appellant and the workman, each fighting his or its own battle, but really a duel between the Railway and the contractor on one side and the workman on the other. There was, therefore, really no issue between the two opposite parties to the workman's application and one would think that there was no scope for any appeal under Clause (d) of Section 30(1). Be that as it may, if the appeal actually filed by the appellant could be regarded as an appeal coming under that clause, it would certainly not have come under the mischief of the third proviso, whatever its merits might be.

It is, however, clear from the grounds taken in the memorandum of appeal that, what is sought to be challenged is not so much the liability of the appellant 'vis-a-vis' the Railway, but the liability of anybody to pay any compensation to the workman at all. The grounds taken are such that if they succeed, the award itself must be set aside and the workman's claim for compensation must fail.

10. It was, however, contended on behalf of the appellant that even if such might turn out to be the result of the success of his appeal, it was still an appeal under Clause (d) of Section 30(1), because the grounds taken were necessary for the purpose of his making out that no order for indemnity should have been made against him, because no order for compensation could be made against the Railway. Reference was made to the terms of Section 12(1) and those of Section 12(2) and it was pointed out that a question under the latter sub-section might be so inextricably bound up with questions contemplated by the former that a reference to the matters covered by the first sub-section would be unavoidable. Going further, the award itself might be required to be challenged.

It was accordingly contended that if for the purpose of sustaining an appeal against an order made under Sub-section (2), it was necessary to challenge the finding on any of the matters covered by Sub-section (1) of Section 12 or to question the award itself, that could properly be done in an appeal under Clause (d) of Section 30(1), although the success of the challenge might be to wipe out the award altogether.

11. I am unable to accept that contention. It appears to me that what Clause (d) of Section 30(1) contemplates is only an appeal which raise's a question between the person indemnified and the indemnifier without in any way placing the award itself under challenge. If the award itself is brought into issue, the appeal would be an appeal against an order awarding compensation and it would be in part at least an appeal under Clause (a), although it might be an appeal under Clause (d) as well. If one examines a little closely the appealable orders referred to in clauses other than Clause (a) of Section 30(1), one would find that those are all orders by which the workman's right to receive the compensation awarded to him is in no way put in peril. The principle of the section appears to me to be that if the appeal be such that by it the workman's right to the compensation awarded to him is placed in jeopardy, security for the workman must be provided for by the deposit of the amount of compensation and such a deposit would be essential to the maintainability of the appeal. If, on the other hand, the workman's right to the compensation awarded does not come into question in the appeal at all, there is no risk to the workman's getting the compensation awarded to him and there is thus off necessity for requiring anyone, preferring such an appeal, to deposit the compensation money. If one remembers that broad fact in mind, the true meaning of Section 30(1) would emerge with sufficient clarity.

12. It was not disputed that if the present appeal succeeded, the award itself would have to be set aside. In my view, the appeal, while it might be an appeal against the order allowing the claim of indemnity against the appellant, is not such an appeal alone, but also an appeal against the basic order awarding compensation to the workmen. It follows that it is not an appeal such as is contemplated by Clause (d), but is in truth and substance an appeal under Clause (a), for which reason the third proviso must apply.

13. A faint attempt was lastly made by the appellant to contend that he was not an employer of the workmen and, therefore, his appeal was not an 'appeal by an employer under clause (a).' This contention is plainly untenable. The appellant<sup>1</sup> is a contractor under whom the workman was directly employed and it is perfectly clear from the terms of Section 12(1) and the case made before the Commissioner that for the purposes of the Act, he is to be treated as an employer and the person

under whom he was engaged as a contractor is only to be treated as the principal. In any event that was the basis upon which the case was contested in the Court below and to that basis all parties must adhere.

14. I desire to add that the question in the present case is not what grounds can be taken in any case in an appeal against an order passed under Sub-section (2) of Section 12, but whether an appeal against such an order can be in part, at least, an appeal under Clause (a) by reason of the grounds taken and whether, if such be the constitution of the appeal, exemption from making the deposit can be claimed. It appears to me that from that point of view, the present appeal is wholly concluded by the grounds set out in the memorandum of appeal and it cannot be treated as an appeal purely under Clause (d).

15. For the reasons given above, the preliminary objection taken by the workman respondent must succeed and this appeal must be dismissed. In view of the novelty of the point, we would not make any order for costs.

**S.R. Das Gupta, J.**

16. I agree.

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