

Nirmala and ors. Vs. Child Development Project Officer and ors.

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Court : Himachal Pradesh

Decided On : Mar-26-2004

Reported in : III(2005)ACC17,2005ACJ846

Judge : V.K. Gupta, C.J.

Acts : Workmen's Compensation Act, 1923 - Section 3; ;Service Rules

Appeal No. : F.A.O. No. 97 of 2004

Appellant : Nirmala and ors.

Respondent : Child Development Project Officer and ors.

Advocate for Def. : M.S. Chandel, A.G. and; C.B. Singh, D.A.G.

Advocate for Pet/Ap. : Jyotsna Rewal Dua, Adv.

Disposition : Appeal allowed

Judgement :

V.K. Gupta, C.J.

C.M.P. (M) No. 112 of 2003:

1. Heard. The cause shown is sufficient. The delay in filing the appeal is condoned and the appeal is treated to have been filed in time.

2. The application is disposed of.

F.A.O. No. 97 of 2004:

3. The learned counsel for the parties submit that the appeal be itself taken up for consideration, hearing and final disposal today itself without formally admitting it for hearing.

4. This is a very strange case where, because of a very inept handling by the Commissioner, Workmen's Compensation, Nahan, Sub Division Nahan, Sirmaur District, the claim petition filed by the appellants under Workmen's Compensation Act, 1923, relating to the death of Pawan Kumar deceased has been dismissed and appellants denied their right of claiming compensation amount on grounds which are wholly, totally and absolutely untenable in law. In fact, I feel dismayed and surprised as to how a person not at all conversant with the basic principles of law was employed and posted as a Commissioner under the Workmen's Compensation Act, because not only he demonstrated total ignorance of law, but also decided the two vital issues in the case in a slipshod manner, by giving findings thereupon which are not at all supported by reasons or logic.

5. Pawan Kumar deceased was employed as a driver by the Social Welfare Department of Himachal Pradesh Government in ICDS Project. The following are the undisputed facts and when I say 'undisputed' facts, I mean the facts which were squarely admitted by the respondents before the Commissioner.

(1) That the accident had occurred on 7.7.1998 while Pawan Kumar on duty was driving vehicle No. HP 03-1223 from Solan to Nahan.

(2) That it is because of this accident that the death occurred to Pawan Kumar deceased.

(3) That this death occurred in the course of his employment with the respondents. The cause of the death was attributable to the factum of employment.

(4) That the factum of death was also proved and established because of the post-mortem of the body of the deceased conducted on 8.7.1998.

(5) At the time of death the deceased was employed in the Social Welfare Department and was posted in ICDS Project.

6. What was the annual income of the deceased and what was his age perhaps is not borne out from the reading of the judgment and perhaps these two might be the facts which either have not been fully established, or these are not properly reflected in the body of the judgment.

7. The following five issues were framed by the Commissioner:

'(1) Whether deceased Pawan Kumar was working under the employment of the respondents and died in an accident while he was discharging his duties?

OPP

(2) Whether the accident arises out of or in the course of respondent's employment?

OPP

(3) Whether the compensation amount claimed is due, or any part of that amount?

OPP

(4) Whether the opposite party is liable to pay the compensation as is due?

OPP

(5) Whether the petitioners are entitled for compensation, if so, to what extent?

OPR'

8. The Commissioner decided issue Nos. 1 and 2 in favour of the appellants, but with respect to issue Nos. 3 and 4, the following findings were recorded:

'Issue No. 3: Whether the respondent is liable for the compensation under the Workmen's Compensation Act, firstly this question is to be replied. It is established that the deceased was employed and the family of the deceased was to be

compensated, but in this case the petitioner refused from coming to the witness-box. This has also come on record that the legal descendants of the deceased have been compensated as per the provisions of service rules. On the basis of the facts on file, this issue is decided against the petitioner.

Issue No. 4: No, the respondents are not liable to pay compensation under the Workmen's Compensation Act.'

9. No reasons, no logic, no grounds. How can the legal representatives of the deceased workman be deprived of their right of claiming compensation merely because the petitioners did not choose to come in the witness-box or that the legal descendants of the deceased might have been compensated as per the service rules, has not at all been explained by the Commissioner in the impugned judgment.

10. As noticed above, deceased Pawan Kumar being a workman was a fact which was not at all disputed by the respondents. Under Section 3 of the Workmen's Compensation Act, 1923, it has clearly been stipulated that if personal injury is caused to a workman by the accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the Act. The right to receive compensation, therefore, accrues the moment it is established with a personal injury (including death) was caused to a workman by an accident arising out of, and in the course of his employment. As noticed, in the present case neither the fact of the deceased Pawan Kumar being a workman was disputed by the respondents, nor did the respondents dispute that the personal injury (death) was caused to him by an accident which arose out of and in the course of his employment with the respondents. That having been done, the only issue which remained to be decided was the extent and the amount of compensation to which the legal representatives of the deceased workman were entitled as per the stipulations contained in the Act.

11. As noticed, Section 3 of the Act is the one provision which lays down the right of the workman and correspondingly of the legal representatives (in the case of death of the workman) to receive compensation. Section 3 nowhere places any

embargo, nor creates any fetters in the enjoyment of this right merely because the workman or his legal representatives might have received any amount of compensation, other than the compensation under the Act, in the form of retiral benefits, or any other benefit under service rules such as pension, provident fund, gratuity, etc., or even any ex gratia amount because the compensation receivable under the Act is a special right created by the statute, namely, Section 3 of the Act and that right cannot be tinkered with or taken away just because under the service rules, the workman or his legal representatives might have received amount(s) from the employer. Similarly, merely because a family member of the workman after his death, be it his wife or anybody else, might have been employed on compassionate grounds, or on any other ground, also cannot be a reason or cause in depriving the workman or his legal representatives from receiving compensation because Section 3 nowhere creates any such fetters on the right of the workman or his legal representatives to receive the compensation. The right to receive compensation under Section 3 is not subject to any of the aforesaid or other contingencies nor can it be extinguished on account of any such or other events or happenings.

12. I would have myself in this appeal calculated the compensation amount and finally disposed of the matter but I am remanding this case to the Commissioner because I am not fully satisfied about the facts relating to the wages that the workman was receiving as on the date of the accident and the exact age of the workman.

13. This petition is allowed. The judgment and award passed by the Commissioner is set aside.

14. The matter is remitted back to the Commissioner for the only and limited purposes, in the light of the clear observations made hereinabove, for determining the amount of compensation. If before the Commissioner the material already is available which irrefutably establishes the income of the deceased at the time of the accident as well as his age, there should not be any need for the Commissioner to take any further evidence and based on this irrefutable established material before him he shall proceed to determine the compensation in

accordance with the provisions of the Act as these stood on the date of the accident. If, however, based on the material available with the Commissioner, he feels that the facts regarding the age of the deceased and his income have to be proved or established, he shall give and afford an opportunity to the parties to prove these facts. If the former course of action is adopted, in the sense that no further evidence is required in the case, the matter shall be finally decided and disposed of within four weeks from the date of receipt of the copy of this order by the Commissioner and if he adopts the latter course of action, the case shall be decided in four months from the said date.

15. The appeal is allowed with costs assessed at Rs. 2,000.

16. A copy of this order shall be sent to the Secretary to the Government, Law Department with a direction to him to circulate it to all concerned, including all the Commissioners, for their future guidance.

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