

Roshan Lal Vs. Workmen's Compensation Commissioner and Anr.

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Court : Himachal Pradesh

Decided On : Dec-07-2001

Reported in : 2003ACJ329

Judge : C.K. Thakker, C.J.

Appeal No. : C.M.P.M.O. No. 32 of 2001

Appellant : Roshan Lal

Respondent : Workmen's Compensation Commissioner and Anr.

Advocate for Def. : M.L. Chauhan, Dy. A.G. and; D. Dadhwal, Adv.

Advocate for Pet/Ap. : Ashwani Pathak, Adv.

Disposition : Petition allowed

Judgement :

C.K. Thakker, C.J.

1. Admitted. Mr. M.L. Chauhan, learned Deputy Advocate General appears and waives service of notice of admission on behalf of respondent No. 1 and Mr. D. Dadhwal, learned Counsel appears on behalf of respondent No. 2 and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. The petitioner being aggrieved by the order passed by the Commissioner, Workmen's Compensation, Sadar Sub Division, Mandi (HP) on 30.3.2001 in the matter titled Roshan Lal, s/o Zalam Ram v. Basandhrai Bottlers Private Ltd. through its Managing Director/Proprietor has approached this Court by invoking Article 227 of the Constitution.

3. The case of the petitioner before this Court is that he is a permanent resident of District Mandi. He was employed by respondent No. 2, Basandhrai Bottlers Pvt. Ltd. through its Managing Director/Proprietor in the Bottling Plant at Ner Chowk. According to him, he received the injuries during the course of employment with respondent No. 2. He, therefore, filed a claim petition under Section 3 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act'). The claim petition is pending adjudication with the Commissioner, Workmen's Compensation, the respondent No. 1 herein.

4. According to the petitioner, he received injuries on hand on 10.4.1996. He was treated at Post Graduate Institute of Medical Education & Research at Chandigarh. The disability was assessed to the extent of 45 per cent in relation to the upper limb and 23 per cent in relation to whole body. Disability certificate was issued by the authorities on 18.11.1996, which was produced on record.

5. It was the case of the petitioner that thereafter he was treated by Zonal Hospital, Mandi. The petitioner was examined by the Medical Board at Zonal Hospital, Mandi on 25.3.2000 and disability was assessed as 45 per cent. It was permanent disability. The petitioner wanted to produce the said certificate on record. For the said purpose, an application was made by the petitioner on 5.4.2000 under Order 18, Rule 17-A of the Code of Civil Procedure, 1908 and a prayer was made that he might be allowed to produce the certificate of disability in evidence in the interest of justice. The application was objected by respondent No. 2 and the learned Commissioner, after hearing the parties, rejected the application by order dated 30.3.2001, which is impugned in the present petition.

6. I have heard the learned Counsel for the parties. It was contended by Mr. Pathak that the Commissioner has committed an error apparent on the face of the record as also failed to exercise jurisdiction vested in him by not granting the

application. It was urged that the certificate was relevant as well as material for the purpose of deciding the real question in controversy and the prayer of the petitioner to produce the same on record ought not to have been rejected by the respondent No. 1. It was also submitted that the reasons recorded and ground weighed with the Commissioner could not be said to be germane and relevant and the order deserves to be quashed. According to the learned Counsel for the petitioner, the Commissioner, Workmen's Compensation can be said to be 'Tribunal' within the meaning of Article 227 of the Constitution and as he has not decided the matter within the four corners of law, it is the power and duty of this Court to correct him. He, therefore, submitted that the petition deserves to be allowed by quashing and setting aside the order passed by the Commissioner and by directing him to exhibit the certificate issued by the Zonal Hospital, Mandi.

7. So far as the learned Deputy Advocate General is concerned, he submitted that he is appearing for respondent No. 1 authority and will abide by the order of the court.

8. So far as respondent No. 2 is concerned, the learned Counsel supported the order passed by the Commissioner. He submitted that the document cannot be said to have been proved in accordance with law. The Commissioner, therefore, was right in observing that at the most the document can be 'marked' but cannot be exhibited. Nobody was examined from the Zonal Hospital. Moreover, the document was produced at a belated stage and, hence, the Commissioner has not committed any illegality in refusing the application. In any case, it was in the discretion of the Commissioner to allow or not to allow the application for placing on record a certificate. When the discretion was exercised, it cannot be interfered with under Article 227 of the Constitution of India. He, therefore, submitted that the petition deserves to be dismissed.

9. Having heard the learned Counsel for the parties, in my opinion, the order deserves to be quashed and set aside. So far as the reasons recorded by the Commissioner are concerned, in my opinion, they cannot be said to be legal, valid or proper. The Commissioner has observed that no prejudice will be caused to the petitioner if the second certificate will not be allowed to be produced on record. To

me, the submission made by the learned Counsel for the petitioner deserves acceptance that if the certificate will not be taken on record, it might cause serious prejudice to the petitioner inasmuch as so far as the first certificate is concerned, it was not final. It was also brought to my notice that the first certificate was issued on 18.11.1996 by the Chandigarh authorities, and in the first certificate a note is appended which reads:

Note: Patient operated on 2.8.1996.

(temporary disability).

1. This condition is non-progressive likely to improve/not likely to improve.

2. Reassessment is:(a) recommended after a period of six months.

10. Again, the learned Commissioner is not right in observing that only some of the provisions of the Code of Civil Procedure apply to the petitions and applications under the Act and not other provisions. The said fact, in my considered opinion, would not go against the petitioner-workman inasmuch as with regard to other provisions, strict rules of procedure would not apply and the Commissioner will have to take an appropriate decision on the basis of justice, equity and good conscience and in the larger interest of justice. The Commissioner is also not correct in observing that the certificate could not be said to have been properly produced. In the application itself, it was mentioned by the applicant that the 'applicant produces himself before the Medical Board in the Zonal Hospital, Mandi and the said Board has issued permanent disability certificate to the extent of 45 per cent on 25.3.2000.' It, therefore, came from the proper authority inasmuch as the applicant had produced himself before the authority and a certificate was issued in his favour.

11. It is no doubt true that respondent No. 2 may have certain objections so far as the entries made in the certificate are concerned. It is open to the said respondent to take all objections available at law, but so far as the production of certificate is concerned, it could not have been rejected and no order could have been passed by the Commissioner, Workmen's Compensation that it could not be exhibited.

12. For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The order passed by the respondent No. 1 is quashed. The certificate, which was produced by the petitioner will now be taken on record and will be exhibited. No order as to costs.

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13. In view of the disposal of the main petition, the present application also stands disposed of and ad interim order passed on 31.7.2001 stands vacated.

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