

Rani Devi Vs. Milkhi Ram

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Court : Jammu and Kashmir

Decided On : Jul-11-1995

Reported in : (1999)IIILLJ461J& K

Judge : Bilal Nazki, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3 and 4

Appeal No. : C.I.M.A. 67/1992

Appellant : Rani Devi

Respondent : Milkhi Ram

Advocate for Pet/Ap. : Karanjit Singh and; S.P. Bakshi, Advs.

Judgement :

Bilal Nazki, J.

1. This is an appeal against the award of Commissioner under Workmen's Compensation Act. Briefly stated, the appellant claimed compensation before the Commissioner for the death of her husband during the course of his employment with the respondents. She stated that her husband was employed as Conductor/second driver by respondent No. 1, and on September 22, 1989 while he was on his way from Srinagar to Jammu in vehicle No. JKN/8867, the vehicle met with an accident and the vehicle fell about 200 feet deep into a Nallah, as a

result whereof husband of the appellant suffered multiple injuries and thereafter succumbed to the same on September 27, 1989. She further stated that her husband was being paid a salary of Rs. 1200/- PM and he was aged 25 years at the time of his death. The vehicle in question stood insured with respondent No. 2/ Insurance Company.

2. The Commissioner heard the respondents. It was not disputed before Commissioner that the death of the appellant's husband was caused by an accident which arose out of and in the course of his employment with respondent No. 1. However, the respondent No. 1 in his statement contended that the monthly salary of Rs.200/- plus Rs. 15 as diet money per day was being paid to the deceased. The respondent No. 2 accepted that the vehicle in question was insured with the Insurance Company. The following issues were drawn by the Commissioner :

1) What was the monthly wage of the deceased conductor at the time of accident involving vehicle No. JKN/8867?

2) To what extent the petitioner is entitled to the relief and from whom?

3. On the basis of evidence, the Commissioner came to the conclusion that the monthly wages of the deceased were Rs.650/-, and on the basis of this figure, he allowed compensation of Rs. 57,556/- in favour of the appellant. He further directed that the said amount shall be deposited in his Court within thirty days of the order, failing which, penalty and interest as admissible under law would become chargeable. The appellant has filed this appeal and seeks two reliefs from this Court as under :

i) That the appellant's case was that her husband was getting Rs. 1200/- PM as wages from his employer and despite that, only Rs. 650/- were assessed as wages of her husband per month;

ii) That the compensation was due to the appellant from the date her husband died, and the respondents were duty bound to deposit the compensation amount within one month of the death of her husband. Since they had failed to do so, the

interest and the penalty had to be ordered from the date of death of the appellant's husband.

4. I have gone through the evidence, and I agree with the Commissioner that the appellant has not proved that the monthly wages of her deceased husband were Rs. 1200/- and he has rightly assessed on the basis of evidence the income of the deceased as Rs.650/- per month. Therefore, no interference on this count is needed by this Court.

5. The counsel for the appellant has drawn my attention to Sections 3 and 4 of the Workmen's Compensation Act, 1923.

6. Section 3 of the Act is the relevant Section which deals with the liability of the employer for payment of compensation. Sub-section (1) of Section 3 provides that employer shall be liable to pay compensation if (personal injury is caused to a workman arising out of accident and in the course of his employment). Various sub-sections of Section 3 provide for certain exemptions and this is not the case of any of the respondents that the present case falls within any exception. Therefore, it is clear that the employer becomes liable to pay the compensation as soon as injury is caused to a workman by an accident which arises out of and in the course of his employment. It is not the order of the Commissioner which makes an employer liable to pay compensation, but the injury itself during the course of employment entitles a workman to compensation from his employer automatically on the date he suffers the injury. Since it is a social legislation, it gives a right to a workman and creates a liability for the employer, even if it is not asked for. The Commissioner under Section 19 only comes into picture when the employer refuses to acknowledge and accept the liability i.e. what has happened in the present case. Once the appellant was not paid within the stipulated period of time, she had no option but to approach the Commissioner. My attention has been drawn to a judgment of the Supreme Court reported in AIR 1976 page 222. The Supreme Court held :

'Section 3 of the Act deals with the employer's liability for compensation. Sub-Section (1) of that Section provides that the employer shall be liable to pay compensation if 'personal injury is caused to a workman by accident arising out of

and in the course of his employment.' It was not the case of the employer that the right of compensation was taken away under Sub-section (5) of Section 3 because of the institution of a suit in a civil Court for damages, in respect of the injury, against the employer or any other person. The employer, therefore, became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore, futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the Section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect the job injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.'

7. In view of the above mandate of the Apex Court, I have no doubt in my mind that the Commissioner has committed an error by asking respondents to pay penalty and interest, if the amount awarded by him was not paid within one month of his order, to the appellant to that extent, I set aside the order. I remand the case back to the Commissioner, who shall after hearing both the parties pass an order in accordance with the observations made hereinabove, keeping in view the mandate of Section 4(a) of the Act. In addition to the compensation awarded by the Commissioner, he shall consider awarding of interest and penalty also from the date of accident, in favour of the appellant.