

Joginder Singh Vs. Commissioner under Workmen's Compensation Act

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Court : Jammu and Kashmir

Decided On : Oct-16-1996

Reported in : (1999)IIILLJ465J& K

Judge : B.A. Khan, J.

Acts : Workmen's Compensation Act, 1923 - Section 21; ;Workmen's Compensation (Amendment) Act, 1995

Appeal No. : C.F.M.A. No. 57/1990

Appellant : Joginder Singh

Respondent : Commissioner under Workmen's Compensation Act

Advocate for Pet/Ap. : S.C. Gupta and; R.K. Gupta, Adv.

Disposition : Appeal allowed

Judgement :

B.A. Khan, J.

1. Appellant's claim petition was rejected by the Commissioner at Jammu vide order dated June 25, 1990 on the plea of jurisdiction in terms of Section 21 of the Workmen's Compensation Act. He is in appeal to assail the order on the ground that since he resided at Jammu along with his employer, the Jammu

Commissioner possessed the requisite jurisdiction.

2. This appeal remained pending in this Court for the last about 6 years and in the meanwhile Section 21 was amended by the amending Act of 1995 allowing a claim to lie now even before the Commissioner for the area in which the workman or in case of death, the dependent claiming compensation ordinarily resides. This amendment is operative with effect from August 19, 1995.

3. In the unamended Section 21, the place of accident gave jurisdiction to the Commissioner concerned and in the amended section, the legislature had now made certain additions: including the place or ordinary residence of the workman and the registered office of the employer. The relevant provisions are extracted and read thus :

Unamended Section 21(1)

Amended Section 21

'Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which--

a) The accident took place which resulted in the injury ; or

b) The workman or in case of his death the, dependent claiming the compensation ordinarily resides ; or

c) The employer has his registered office.'

4. Apart from this, the relevant rules require the Commissioner to transfer a wrongly filed claim to the right Commissioner. Rule 21(2) in this regard stipulates that if it appears to the Commissioner at a subsequent stage that an application should have been presented to the other Commissioner, he shall send it to the Commissioner empowered to deal with it and shall inform that applicant.

5. Going by the terms and tenor of unamended Section 21, there is no room for doubt that the Commissioner at Jammu lacked jurisdiction as the accident has

admittedly taken place in Haryana State. But while declining to exercise the jurisdiction, he was required to send the appellant's claim application to the concerned Commissioner at Haryana after informing the applicant. Instead of doing so, he proceeded to reject the claim petition.

6. All this notwithstanding, the question that now arises is: whether the appellant claimant, who is a driver and admittedly a resident of Jammu along with his employer, should be sent to Haryana to seek adjudication of his claim when he had been before this Court for more than 6 years and when during this period jurisdictional boundaries had extended beyond the place of accident, to save inconvenience and botheration to the accident victims?

7. Learned counsel for respondent company, Mr. Gupta, contended that the amended Section 21 was operative from August 19, 1995 and could not take retrospective effect from the date of accident in 1989. He submitted that the appellant's claim petition was governed by the unamended Section 21 and was rightly rejected by the Jammu Commissioner.

8. There can be no dispute with the proposition advanced by Mr. Gupta. But, I feel persuaded to take a different view in the given situation to prevent miscarriage of justice.

9. While it is true that the amendment in Section 21 took effect from August 19, 1995 whereas the accident occurred on May 5, 1989, it cannot be overlooked that the appellant's case continued to remain pending before this Court till date. His present Appeal is an extension of his claim petition and would require to be disposed of in accordance with the law in force as on today. Therefore, if under the present legal position, it is permissible for the Jammu Commissioner to assume jurisdiction, it would be both unjust and hyper technical to require the claimant to approach the Haryana Commissioner after so many years and at great inconvenience.

10. Looking at it from a different angle and taking the worse, even if this appeal would face rejection, the appellant would still be entitled to file claim petition before the Jammu Commissioner in terms of the prevailing legal position. Therefore, the

end result would remain the same in both situations.

11. The provisions of the social welfare legislations like the Workmen's Compensation Act require liberal and harmonious construction in consonance with the spirit and purpose sought to be achieved. Any interpretation that tends to defeat the purpose required to be avoided. That explains the amendment to Section 21 to enable accident victims and their claimants to seek adjudication of their claims nearer home. After all, should such victim or a claimant be made to suffer while vindicating his claim.

12. In the result, I hold that an Appeal arising out of a claim petition under the Workmen's Compensation Act is an extension of such claim and is liable to be disposed of in accordance with the law in force on the date of disposal. This appeal accordingly succeeds though on a different ground. The Jammu Commissioner is consequently directed to revive the appellant's Claim Petition No. 24/WCA/89 and to dispose it of in accordance with law. The parties to appear before him on November 23, 1996.

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