
(2010) 10 DEL CK 0097
In the Delhi High Court
Case No : FAO 113 of 2005

A. and A. Accessories

APPELLANT

Vs

Commissioner Workmen's Compens

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 2(1), 9

Citation : (2012) ACJ 514 : (2010) 174 DLT 32 : (2011) 2 TAC 66

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Harvinder Singh and Mohit Gupta, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—None is appearing for the respondent. By this appeal learned Counsel for the appellant assails the order passed by the Commissioner under the Workmens Compensation Act awarding compensation to the respondent Hasina Begum to the tune of Rs. 4,50,000/- on account of death of one Kumari Anjum in an accident on account of breaking of fire in the factory belonging to the appellant which took place on 06.03.2002, on the basis of filing of a claim petition the second respondent despite having obtained compensation of Rs. 1,50,000/- from the petitioner which it is stated was given by the appellant on humanitarian grounds.

2. The claim of the respondent was contested by the appellant by filing written statement wherein they have taken preliminary objections as to the maintainability of the claim petition primarily on the ground that (i) the respondent Hasina Begum was not entitled to compensation under the Act, as she had failed to prove that being not a widowed mother, but a married parent, she was wholly or in part dependent on her daughter at the time of her death and as such, she was not a dependent, as defined u/s 2(d)(iii)(b) of the Act. (ii) the said respondent also failed to prove that her deceased daughter Ms. Anjum

had ever been employed by the appellant. It is also pleaded that her death took place in relation to an accident which occurred in the course of her employment with the appellant.

3. Learned Counsel for the appellant submits that in her evidence produced before the Workmens Commissioner second respondent despite specific objection raised by the appellant in their written statement questioning her rights to claim compensation being not a dependent party or wholly on the deceased Anjum Banu has not been taken into consideration while framing issues. The Commissioner has also not dealt with this objection while disposing of the claim petition of the respondent. It is also submitted that even with respect to the employment of deceased Anjum Banu with the petitioner, despite an admission on the part of the second respondent that deceased Anjum was not an employee of the appellant and that the accident had also not occurred during the course of her employment with the appellant, the Commissioner has ignored these aspects.

4. It has been submitted that even though appellants have brought agreement Exhibit MW1/1 as referred to in the affidavit of the management witness, namely, Shri Satish Singh, on record the said agreement has simply been ignored by the Commissioner. It is stated that reading of the agreement entered into between the parties the respondent admitted that Kumari Anjum Banu was not an employee of the appellant. Some relevant aspects of the agreement are reproduced for the sake of reference:

AND WHEREAS, now the second party has approached the management and requested that since they belong to a poor family, as such, they requested for some financial help for them and for their family and requested for payment of some amount. Although, the management is under no obligation to pay any amount or compensation but the management of M/S A & A have on purely humanitarian ground to help the second party agreed to pay a lump-sum amount of Rs. 1,50,000/- to them keeping in view the unfortunate death of their daughter who has sustained injuries in the fire.

AND WHEREAS, the second party further agrees that their daughter Ms. Anjum was never an employee of M/S A & A Management nor had any kind of contractual arrangement with M/S A & A; hence, specifically certifying and accepting that there was never a relationship of employee and employer between Ms. Anjum and M/S A & A Management. The second party agrees that as their daughter Ms. Anjum and Ms. Sudha were not the employees of the Management, as such, no claim/damages qua her was/is payable under any law as they were simply visitors.

AND WHEREAS, the second party specifically agreed that they have no claim of any kind whatsoever against the first party for the unfortunate death of their daughter Anjum. They further agrees that after receipt of abovesaid amount of Rs. 1,50,000/- that has been paid to them through Cheque No. 227097 drawn at SBI Bank. They neither have any claim on the first party after the unfortunate

incident nor will sue or raise any claim in future for the abovesaid incident before any legal forum in any form whatsoever.

5. It is submitted that receipt of Rs. 1,50,000/- has been admitted by the respondent Hasina Begum in her statement before the Commissioner and the same has also been reiterated by the witness appearing for the appellant. It is true that record with regard to the employment of Ms. Anjum Banu has not been produced by the appellant on account of it having been destroyed in a fire. This will not prove that Anjum was an employee of the appellant. Even if it is presumed for the sake of arguments that the appellant tried to hide that record the onus to prove the employment on the part of the respondent with regard to the deceased being an employee of the appellant cannot be met.

6. In any event the Workmen Commissioner while passing the order of compensation in terms of the order dated 03.09.2004 has simply not taken note of the relevant objections which goes to the root of the case and disputes. In fact he has not even framed any issue with regard to his jurisdiction which he should have framed in view of specific objections raised by the appellant.

7. On the issue of the right of Hasina Begum to file a claim petition reference has been made to a judgment delivered by Punjab & Haryana High Court in the case of Smt. Shakuntla Devi v. Smt. Beer Kaur and Ors. Vol. CXXII (1999-2) which reads as under:

Workmens Compensation Act, 1923 (8 of 1923) Section 2(d)- Parents other than a widowed mother would be entitled to compensation if they are wholly or partly dependent on the workman at the time of his death.

Held, that the parents other than a widowed mother would be entitled to compensation if they are wholly or partly dependent on the workman at the time of his death. It is in evidence that the appellant is not the widowed mother. She admitted that her husband is alive. She is only entitled to compensation if she was wholly or in part dependent on the earnings of the deceased. The widow of the deceased had stated before the Commissioner that the appellant and her husband were living separately. It is in evidence that the appellant and her husband are earning their livelihood by working as a labourer. The deceased himself was working as a labourer. The totality of facts, therefore, clearly indicates that it cannot be held on basis of the evidence that appellant was dependent wholly or in part on earnings of the deceased. Therefore, the appellant indeed cannot be held entitled for any compensation.

8. The same effect is of full Bench judgment delivered by Madras High Court in the case of B.M. Habeebullah Maricar v. Periaswami and Ors. AIR 1977 Mad 336 Full Bench where it has been held:

This petition originally came up for hearing before me sitting singly and it was then contended in support of it that compensation payable under the Act could be claimed only by the injured workman or, in case of his death, by a body of

persons described by the Act as "dependents", and not by any other person, that admittedly none of the respondents was a dependant within the meaning of that expression as used in the Act and that the application made by the respondents before the Commissioner for substitution of their names as their mother's legal representatives, was liable to be rejected. Reference in this connection was made to various provisions of the Act and specially to Section 9 which inter alia bars the devolution by operation of law of any lump sum or half-monthly payment payable under the Act to any person other than "the workman" and to Clause (n) of Sub-section (1) of Section 2 which defines "a workman" and states that any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

9. In this regard I am also guided by a judgment referred to by learned Counsel for the appellant delivered by the Hon"ble Supreme Court in the case of The Range Forest Officer Vs. S.T. Hadimani, wherein it has been held:

In our opinion, the tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

10. Taking all these facts into consideration it is apparent that order of the Workmens Commissioner dated 03.09.2004 cannot be sustained inasmuch the Commissioner has not appreciated that the claimant had no right to file the compensation claim for the reason neither she was the dependent nor the deceased Anjum was the employee of the appellant. In fact these issues were basic issues with regard to the jurisdiction of the Tribunal as to whether the claimant Hasina Banu was entitled to file a claim petition which have not been adjudicated upon by the Commissioner. Even though in terms of agreement Exhibit MW1/1 placed on record by the appellant's witness was available before the Commissioner, the Commissioner ought to have framed additional issues once such an evidence was brought on record maybe by the appellant or by the respondent for the purpose of enforcing her claim. But this has not been done. This is an error of jurisdiction also.

11. The Commissioner has also not taken note of the admissions by the claimant where she has categorically admitted that Anjum Banu was not an employee of the appellant and had not suffered accident in the course of her employment which were issues basic to the whole controversy entitling the respondent to

have compensation from the appellant. In view of that, the order of the Commissioner cannot be sustained. Accordingly the appeal is allowed. The order of the Commissioner is set aside with no orders as to costs. Consequently the appellants would be entitled to recover the amount from the respondent No. 2.