

(1986) 01 SHI CK 0007
In the High Court Of Himachal Pradesh

Amar Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Citation : (1987) 1 ACC 336 : (1986) ACJ 864 : (1986) ShimLC 145

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Judgement

P.D. Desai, C.J.—The petitioner, aged about 35, claims to belong to a poor family. He addressed an application to one of us (Chief Justice), which was registered as a writ petition, in the course of which he has submitted that he sustained injury on account of a motor accident which occurred on March 31, 1982 near the nursery of village Puruwala across river Giri and that the vehicle involved in the accident was Jeep No. HPS 344, owned by the Irrigation and Public Health Division, H.P., PWD, Paonta Sahib. The case of the petitioner is that he has become totally disabled ever since the accident, which has caused grievous injury on his left leg, and that he is rendered unemployed and a victim of undeserved want. The grievance of the petitioner is that ever since the date of the accident, he had been assured by the authorities of the Irrigation and Public Health Department, HP., PWD, Paonta Sahib that he would be given compensation but he has not received any amount towards compensation so far. The petitioner has, therefore, sought an appropriate direction against respondent Nos. 1 to 4 or the insurer of the vehicle to pay compensation to him in accordance with law.

2. The petitioner has already instituted proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") before the Commissioner for Workmen's Compensation, H.P., PWD, Solan (hereinafter referred to as "the Commissioner"). Those proceedings are still pending before the Commissioner. The Commissioner was, therefore, ordered to be joined as a party-respondent. The Commissioner has filed an affidavit, dated December 2b,

1985, stating, inter alia, that he had received a report from the Executive Engineer, Irrigation and Public Health Division, H.P., PWD, Paonta Sahib, vide letter dated April 24, 1982, on the basis of which proceedings under the Act were started but they could not be concluded because the medical certificate indicating the extent of disability, police report, wage chart, etc. were not placed on the record of the case. The Commissioner has also stated that according to the report received by him from the fourth respondent (Assistant Engineer, Irrigation and Public Health Sub-Division, H.P., PWD, Paonta Sahib), the petitioner is not a "workman" within the meaning of the Act and that, therefore, the proceedings under the Act may not be competent.

3. When petitioner had appeared in person on December 16, 1985, the court had an occasion to notice that he had sustained crush injury on his left leg and that he was able to walk only with the assistance of crutches. The Commissioner has also stated in the course of his affidavit that when the petitioner had appeared before him he was found to be disabled due to crush injury on the left leg. The petitioner has also placed on record a photograph showing the nature and extent of the injury sustained by him.

4. The fact that the petitioner has sustained an injury in the course of an accident which took place at about 4 p.m. on March 31, 1982, near the nursery of village Puruwala across river Giri and that the vehicle involved in the accident was owned by the Irrigation and Public Health Division, H.P., PWD, Paonta Sahib, and was being driven at the relevant time by driver Jagat Singh employed in the said Division is not in dispute. Annexure R-I, is a letter, dated April 5, 1982, addressed by the Executive Engineer, Irrigation and Public Health Division, HP., PWD, Paonta Sahib, to the Superintending Engineer, Giri Irrigation Circle, H.P., PWD, Nahan, which amply bears out these facts.

5. Mr. D.D. Sood, who appears on behalf of Mr. Chhabil Dass, who was appointed amicus curiae, submitted that the proceedings instituted before the Commissioner under the Act are not competent as the petitioner is not a "workman" who can be stated to have sustained a personal injury in an accident arising out of and in the course of his employment with his employer and that the only remedy available to the petitioner is to institute a claim petition under the Motor Vehicles Act, 1939, before the Motor Accidents Claims Tribunal, Nahan. Mr. Sood submitted to the court as application for condonation of delay together with the claim petition duly thumb impressed by the petitioner and requested that the documents be forwarded to the Motor Accidents Claims Tribunal, Nahan, (hereinafter referred to as "the Tribunal") for registering the case and for proceeding with the same in accordance with law. He also submitted that on the facts and in the circumstances of the case, the answering respondents be directed to make an ex gratia payment to the petitioner pending the disposal of the claim petition so as to relieve him from undeserved want and undue hardship.

6. In view of the foregoing and on the facts and in the circumstances of the case, it appears to be expedient in the interest of justice to issue the following

directions:

(1) The Registry will forward the documents submitted by Mr. D.D. Sood on behalf of the petitioner to the Tribunal with a direction to register the claim petition along with the application for condonation of delay and to proceed to deal with the case in accordance with law. If the said documents are defective in any manner, the Tribunal will call upon the petitioner to remedy the defect.

(2) The Tribunal will provide legal assistance to the petitioner so as to enable him to prosecute the case, if he so desires, the Tribunal will either direct the District Legal Aid Committee to provide legal aid and assistance or request a counsel practising in the court to render voluntary legal assistance to the petitioner.

(3) The petitioner will withdraw the proceedings before the Commissioner within eight weeks from today.

(4) The Tribunal will first take up for consideration the application for condonation of delay in presenting the claim petition and decide the same within a period of six weeks. In arriving at an appropriate decision in accordance with law on the said application, the Motor Accidents Claims Tribunal will take into consideration the fact of the pendency of the proceedings under the Act before the Commissioner and will be guided by the principles laid down in the decision in this court in *Mangal Chand v. Forest Department through Divisional Forest Officer, Nihar* 1985 ACJ 8. The respondents, who are the State authorities, will also bear in mind the observations made by this court in the aforementioned decision as well as in *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, while raising the plea in defence, if any, so far as the application for condonation of delay is concerned.

(5) The Tribunal will decide the claim petition with the utmost expedition and latest by April 30, 1986.

(6) The answering respondents will, in conformity with the Directive Principle of State Policy enshrined in Article 41 of the Constitution and having regard to the undisputed fact that the petitioner has sustained an injury in the course of an accident caused by the driving of a motor vehicle owned by the State, make to the petitioner an ex gratia payment in the sum of Rs. 5,000/-. The sum of Rs. 5,000/- will be deposited in the office of the Motor Accidents Claims Tribunal, Nahan, within a period of fifteen days from today. The Tribunal will arrange to have the said amount paid to the petitioner in person. The ex gratia payment made accordingly will, however, be adjustable against the compensation, if any, to which the petitioner might be found entitled as a result of the adjudication of the claim petition.

7. Rule made absolute in the aforesaid terms with no order as to costs.

8. Mr. D.D. Sood, who appeared on behalf of Mr. Chhabil Dass, who was appointed amicus curiae, has rendered valuable assistance to the court and we place on record our sense of appreciation for the same.

9. Dasti copy on usual terms. A copy of the Order to be sent to the petitioner by registered post.