
(1961) 03 GUJ CK 0008
In the Gujarat High Court
Case No : Appeal No. 258 of 1960

Amarshi Jeram

APPELLANT

Vs

Hazrat and Co. and Another

RESPONDENT

Date of Decision : 15-03-1961

Acts Referred:

Workmens Compensation Act, 1923 — Section 11, 17, 28

Citation : AIR 1962 Guj 262 : (1962) 4 FLR 340 : (1962) 3 GLR 197 : (1962) 2 LLJ 187

Hon'ble Judges : J.M. Shelat, J

Bench : Single Bench

Advocate : D.D. Vyas, for C.M. Shah and M.B. Shah, for the Appellant; A.V. Mody, for K.C. Patel and P.M. Doshi, for the Respondent

Final Decision : Allowed

Judgement

J.M. Shelat, J.

Facts

1. The petitioner, working as a mechanic, at Bhadar Dam under the 1st opponents as the contractors, on a salary of Rs. 200/- per month mot with an accident at about 11-0 Hrs. on the night of 1-5-1956. When he was returning to his residence he fell in a ditch which was 12 to 15 ft. deep and where a foundation one had been laid. No lights were placed by the contractors near about the ditch so as to serve as a warning to persons walking nearby at night against falling into the ditch. As the accident took place when the petitioner was returning to his residence after his work, the workman must be said to have sustained injuries as a result of the accident arising out of and in the course of his employment. He received injuries to both of his legs and these injuries caused fractures to the bones near the ankles. The petitioner first took treatment from a bone setter and thereafter took treatment from a doctor. His case was that in spite of these and other treatments such as massaging he was not

completely recovered though he was in a position to put on shoes on both his feet and also could walk, though slowly. His case further was that there was no longer any trouble in his right leg but there was still a defect in his left leg with the result that he could not sit or walk with pressure on his left leg and, therefore, could not work a generator or fit oil engines. He is also not in a position to walk without the assistance of a stick. As regards the agreement dated the 4th of September, 1957 his allegation was that that was taken from him under pressure by his employers. He admitted that he had received a sum of Rs. 500/- under that agreement. The workman examined Dr. Popat who deposed that though the fractured bone of the left leg had united and though there was no apparent defect in the left leg, the workman was complaining of pain when he was made, to stand erect and to apply pressure on his left foot. The workman had also complained to him of getting pain whenever he walked a long distance. Dr. Popat's evidence next was that in his view the workman would have difficulty in doing engineering work whenever in the course of such work he would have to stand for 3 to 4 hours or walk a distance of about 2 or more miles.

On this evidence, the Commissioner found that though there was a ditch of about 12 to 15 ft. in depth the employers had not taken any precaution such as to keep lights at night. He also found that the injuries sustained by the workman were the result of an accident which occurred out of and in the course of his employment. But the Commissioner, held on a consideration, by him of the medical testimony, that the accident had not resulted in the loss of use of both the legs of the workman, and, that there was loss of use of the left leg of the workman which loss was not total. In other words, he found that there was only a temporary disablement as there was neither a total nor a partial permanent disablement of the use of the left leg.

On the question of the agreement dated 4-9-1957 Ex. 5 the Commissioner held that the agreement was valid and binding on the parties and directed that the agreement be registered as provided for by Section 28 of the Workmen's Compensation Act.

Consequently, the Commissioner for Workmen's Compensation, Rajkot, dismissed the workman's claim for Rs. 5100/- and relying upon the agreement Ex. 5. entered into by the parties on the 4th of September, 1957, awarded a sum of Rs. 500/- only. The workman preferred an appeal from the order passed by the Commissioners.

JUDGMENT

(After stating the facts and findings arrived at by the Commissioner the judgment proceeded:) Now, it was contended by Mr. Vyas that the injuries sustained by the workman amounted to a total permanent disablement and therefore the workman would be entitled to the compensation of Rs. 4900/-, though not Rs. 5100/- as claimed by him. It was argued that the medical evidence disclosed that the workman would not be able to do the same work and

in the same manner as he used to do before the accident. Reliance was placed on the evidence in particular, of Dr. Popat. Mr. Vyas also contended that the agreement, Ex. 5, was void in view of the provisions of Section 17 of the, Act (that is, the Workmen's Compensation Act, 1923) as according to the evidence of the workman it was obtained from him under pressure for the purpose of reducing the liability of the employers. He also argued that no reliance could be placed upon that agreement as it was not registered in accordance with the provisions of Section 28 and the rules made under the Act. Mr. Vyas submitted that the learned Commissioner was in error when in paras 7 and 8 of his order he held that he was entitled to direct its registration on a mere production of the agreement by the employers in the course of the hearing before him.

2. Mr. Modi, on the other hand, argued that even according to the evidence of Dr. Popat there would have been no defect or disablement if the workman had taken proper treatment. He argued that instead of going to Dhoraji, the bonesetter, the workman ought to have taken treatment at a hospital; that though the workman went to the Irwin Hospital of Jamnagar he did not continue the treatment there and therefore the defect or disablement in his left leg was solely due, to want of care on his part and failure to take proper treatment for which there could lie no liability on the employer. Mr. Modi has, however, not been able to point out to me any provisions of the Act which would indicate that if the workman were to fail to take proper treatment, the employer could avoid his liability to pay compensation. In fact, Section 11 of the Act would appear to be a pointer to the contrary. It must be remembered that the object of the Act is to provide compensation for injuries resulting from an accident arising in the course of employment. As soon as therefore there is an accident in consequence of which workman suffers injuries, the employer becomes liable to pay compensation. Section 11 first provides that where a workman has given notice of an accident, he shall if the employer offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under the Act shall, if so required, submit himself for such examination from time to time. Sub-section (2) then provides that if a workman, on being required to do so by the employer or by the Commissioner, at any time refused to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless in the case of refusal, he was prevented by any sufficient cause from submitting himself. Sub-section (3) provides that if a workman, before the expiry of the period within which he is liable under Sub-section (1) to be required to submit himself for medical examination voluntarily leaves without having been so examined the vicinity of the place in which he was so employed his right to compensation shall be suspended until he returns and offers himself for such examination. Sub-section (6) of Section 11 provides that where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or

having accepted such offer has deliberately disregarded the Instructions of such medical practitioner, then, if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and the resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if "the workman had been regularly attended by a qualified medical practitioner whose instructions he had followed, and compensation, if any, shall be payable accordingly. It seems that Section 11 of the Act was intended to provide a remedy in certain cases against payment of compensation and a claim for excessive compensation. It is clear from the Section that an employer can avoid liability for compensation on this providing the workman with the services of a medical practitioner and if such services are refused or instruction of such medical practitioner are disregarded by the workman In an unreasonable manner, the injury and "he resulting disablement are to be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had l>een regularly attended by a qualified medical practitioner and whose instructions the workman had followed. But it is ajso clear from this Section that the onus is upon the employer to prove that he had offered services of a medical practitioner, free of charge, to the workman and that in spite of such offer the workman had refused to take treatment of such: medical practitioner or that such treatment was taken but the workman had disregarded the Instructions of such a medical practitioner. As I have already pointed out, no evidence was led on behalf of the employers.

3. It is true that the workman was first taken to Dhoraji a bonesetter, instead of to a hospital. But there was no evidence to show that it was the workman who had insisted on being taken to Dhoraji instead of to a hospital, It is also true that the workman went to the Irwin Hospital at Jamnagar from where he was discharged after four days and he did not go to the hospital again. But that would not mean and there, was no evidence to the effect that the workman discontinued going to the hospital in spite of medical instructions to the contrary. Thus, there was no evidence either of a refusal to take medical treatment though such treatment was offered to him by the employers free of charge or of disregard of any medical instructions. In these circumstances, it is somewhat difficult to appreciate as to now Mr. Modi would be entitled to claim the benefit of Section 11.

4. Mr. Modi next contended that the agreement, Ex. 5, was valid and binding upon the parties. He argued that there was no evidence except the bare word of the workman that that agreement was involuntary or brought about under pressure of the employers or that it was made to contract out of the employers liability to pay compensation. Section 17 of the Act upon which Mr. Vyas placed reliance lays down that any contract or agreement whereby a workman relinquishes any right of compensation from any employer for personal injury

arising out of or in the course of employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under the Act. It would seem that whenever a contract or an agreement purporting to remove or reduce the liability of an employer to pay compensation under the Act is produced before the Commissioner, it is his duty to ascertain, the true object of the agreement and the circumstances in which it was made. Except for what is stated in the agreement Ex. 5, there is no doubt that compensation payable to the workman would be more than the amount of Rs. 500/-. It is possible that in some cases a workman might be forced to accept such an agreement by stress of circumstances such as want of funds to take medical treatment or want of funds to provide himself and his family with the necessities of life during the time that he is unable to pursue his usual vocation due to the injuries received by him or as a result of some inducement by the employers. It is to provide against such a contingency and against a temptation on the part of a workman to contract out of the employer's liability that Section 17 appears to have been incorporated in the Act. The evidence of the workman in this case was that the agreement Ex. 5 was entered into by him under pressure of his employers. The agreement no doubt states that it was voluntary and that the applicant had agreed to accept Rs. 500/- in full satisfaction of his claim. But such a statement is bound to be there in all such agreements. I may observe that the statement of the workman in his evidence that pressure was brought upon him to make him agree to Ex. 5 has not been controverted by any evidence adduced by the employer. The fact that that statement is not controverted by any other evidence does not appear to have been taken into account by the learned Commissioner. There does not therefore appear to be any valid reason why the evidence of the workman on this part of his case was disregarded by the learned Commissioner. The agreement, therefore, to the extent that it purported to reduce the liability of the employers to pay compensation under the Act must be held null and void and such an agreement cannot be registered u/s 28 of the Act.

5. But Mr. Modi argued that the learned Commissioner has in fact directed the agreement to be registered and that he was entitled to give such a direction even when there was no application by the employers to have it registered and though it was only produced by the employers in answer to the claim made by the workman. This part of the order where the learned Commissioner directs the registration of the agreement Ex. 5 appears to be the weakest part of his order. The reasons which he gives for his direction to have the agreement registered are that the agreement Ex. 5 was produced by the employer as soon as the workman filed his claim and secondly that the Act does not provide any time limit within which such agreements are to be filed before the Commissioner. In my view, these are not correct grounds to hold that directions to register the agreement at the stage of the decision could be given though no doubt the Act does not provide for any time limit. What the learned Commissioner failed to appreciate "was that the Legislature in enacting this Act was at considerable

pains to provide an elaborate procedure for registration and also to provide that it is only when, an agreement is registered according to such procedure that it becomes valid and binding on the parties. Section 28 of the Act lays down that procedure and requires the Commissioner, when an agreement is produced before him for registration, to consider the question of adequacy or otherwise of compensator and also to consider the question whether such an agreement was entered into by fraud or undue influence or by improper means. The section provides that these questions are to be inquired into by the Commissioner in an inquiry to be "held by him in an application for registration by the parties. Section 29 provides that where a memorandum of any agreement the registration of which is required by Section 28 is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of the Act and notwithstanding anything contained under the proviso to Sub-section (1) of Section 4 shall not be entitled unless the Commissioner otherwise directs to deduct more than half of any amount paid to the workman by way of compensation under the agreement or otherwise. Rules 48 to 52 of the Rules made under the Act provide that the memorandum of agreement sent to the Commissioner for registration shall be in duplicate and in as close conformity as the circumstances of the case admit with Form K or Form L or Form M as the case may be. Rule 49 provides that on receiving a memorandum of agreement, the Commissioner shall, unless he considers that there are grounds for refusing to record the memorandum, fix a date for recording the same, and shall issue a notice in writing in Form N to the parties concerned that in default of objections he proposes to record the memorandum on the date fixed by him. On the date so fixed the Commissioner has to record the memorandum unless, after hearing any of the parties who appear and desire to be heard, he considers that it ought not to be recorded. Rules 50 and 51 provide the procedure where the Commissioner considers that he should refuse to record the memorandum and where he in fact refuses to record it under Rule 52, if the Commissioner were of the opinion that he should record the memorandum, he has to cause the same to be entered in a register in Form R and to cause an endorsement to be entered into Under his signature of a copy of the memorandum to be retained by him in the manner provided therein.

6. It is clear that no such application was made by the employers for the registration of the agreement Ex. 5. It is also clear that no inquiry was held by the learned Commissioner in accordance with the procedure laid down in the Act and the Rules. In these circumstances, the learned Commissioner was not entitled on his own to consider the question of the voluntaries or the adequacy of compensation on a mere production of the agreement by the employers in answer to the claim of compensation made by the workman. The Commissioner had no jurisdiction to bypass the specific procedure advisedly laid down by the Legislature in Section 28 of the Act and the rules made under the Act. In fact the learned Commissioner ought to have disregarded agreement Ex. 5 as : the same

had not been registered under the Act when it was produced and relied upon by the employers. There being thus no properly registered agreement, the learned Commissioner ought to have determined the compensation on a consideration of the injuries sustained and the resulting disablement suffered by the workman.

7. Ordinarily, I would have remanded this case back to the learned Commissioner to determine the question of quantum of compensation in the light of the evidence on record in this case. But the accident arose as early as May 1956 and the inquiry before the learned Commissioner ended in August 1958. There has, there-fore, already been considerable delay in deciding the case and if the matter were again to be remanded to the learned Commissioner, it would mean some more delay which is bound to affect prejudicially the workman, I propose, therefore, to determine the question of the quantum of compensation myself without the necessity of having to remand the case to the learned Commissioner.

8. The evidence on record shows that there is no disablement of the right leg of the workman but the workman has suffered a permanent disability to his left leg in the sense that though there is no total, loss of that leg, he would not be able, according to Dr. popat, to work as a mechanic whenever he has in the course of his work to stand for 2 or 3 "hours or to apply pressure to his left leg while doing such work Or whenever he has for such work to walk a distance of about 2 or 3 miles. It is clear from the evidence therefore that the workman would not be able to do the same work and in the same manner as he used to do prior to the date, of the accident. Section 2(g) of the Act defines "partial disablement" as meaning

"where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of a permanent nature", such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time, provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement".

Clause (1) of Section 2 defines "total disablement as meaning,

"such disablement, whether of a temporary or a permanent nature, as incapacitates a workman for all work which he was capable of performing at the tune of the accident resulting in such disablement; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity as specified in that Schedule against those injuries amounts to one hundred percent".

The present case cannot fall u/s 2(1) as the disablement resulting from the accident to the workman is not the disablement for all work even according to the workman himself nor is it a case of loss of the sight of both the eyes or the combination of Injuries resulting in the aggregate to loss of earning capacity amounting to one hundred percent as specified in Schedule I of the Act. The

evidence of Dr. Popat, however_ makes it clear that this is a case of partial disablement of a permanent nature which has reduced the earning capacity in the employment which the workman was capable of undertaking at the time " of the accident . The compensation payable to the workman, therefore, has to be calculated upon this footing. IT IS agreed by both the learned advocates of the parties that on this footing, the compensation payable to the workman would come to Rs. 2450/- and in the absence of the. Commissioner having correctly directed otherwise as provided u/s 29 of the Act the employers would only be entitled to a deduction of half the amount paid by them, viz., Rs. 250/-. The result is that the workman is entitled to a sum of Rs. 2200/- from the 1st respondent.

9. For the reasons aforesaid the Order passed by the learned Commissioner is set aside The appeal is allowed" and there will be a decree against the 1st opponents for a sum of Rs. 2200/- and costs all throughout.