

(1972) 05 DEL CK 0007

In the Delhi High Court

Case No : First Appeal No. 5 of 1966

Arjan Dass Kapoor and Another

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 26-05-1972

Acts Referred:

Citation : (1972) 8 DLT 461

Hon'ble Judges : M.R.A Ansari, J

Bench : Single Bench

Advocate : Ravinder Sethi and A.P. Gupta, for the Appellant;

Judgement

M.R.A. Ansari, J.

(1) The Employees" State Insurance Corporation, the respondent herein, filed an application before the Employees" Insurance Court u/s 66 of the Employees" State Insurance Act, 1948 claiming recovery of Rs. 3,067.50 paise from the appellants herein in respect of an employment injury sustained by Sohan Singh, an employee of the appellants, while working in the factory of the appellants on 2nd May, 1964. The injury was sustained according to the respondent-corporation, because of the negligence of the appellants in not providing safety-guards to the gears in the lathe machine as required u/s 21 of the Factories Act.

(2) The appellants, in their reply admitted that Sohan Singh was their employee and that he had sustained an employment injury in the manner stated by the respondent-corporation. The quantum of the compensation claimed by the respondent was also not disputed. It was also admitted by them that no safety-guards had been provided to the gears of the lathe machine. But it was denied that there was any negligence on the part of the appellants in not providing the safety- guards to the gears, because, according to them, it was impossible to provide any safety-guards for the gears as such safety-guards would prevent the gears from working altogether. According to the appellants, they had complied with the requirements of section 21 of the Factories Act in as much as they had

put up a wooden fence in front of the lathe machine, a lever for stopping the machine whenever the workers had to touch the gears and had also given instructions to the workers not to touch the gears without stopping the machine. The appellant, Therefore, denied their liability to pay any compensation to the respondent-corporation in respect of the employment injury sustained by Sohan Singh.

(3) The following issues were framed by the learned Insurance Court :-

1. Whether Sohan Singh suffered an employment injury by reason of the negligence of the respondents to observe the necessary safety rules ? 2. Relief.

The learned Insurance Court held that the appellants were guilty of negligence in not providing the safety-guards to the gears of the lathe machine as required u/s 21 of the Factories Act. He, Therefore, passed a decree for Rs. 3,067.50 paise with costs in favor of the respondent-corporation and against the appellants. The present appeal is filed by the appellants against the said judgment and decree of the learned Insurance Court.

(4) The facts are not in dispute. On the side of the appellants, it is admitted that no safety-guards as such were provided for the gears of the lathe machine and on the side of the respondent-Corporation, it is not disputed that fence had been put up in front of the lathe machine, a lever had also been installed to stop the lathe machine and also that instructions had been given to the workers that they should not touch the gears without Stopping the machine. The question for consideration is whether the appellants had complied with the requirements of section 21 of the Factories Act.

(5) The relevant portion of section 21 of the Factories Act reads as follows:

" EVERY dangerous part of an y other machinery shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use."

Section 21, Therefore, requires that every dangerous part of a machinery shall be securely fenced by safeguards of substantial construction. It does not specifically require that such dangerous parts should be either fully covered up or that safe guards of any particular description should be provided for such dangerous part. It is the contention of the appellants that if safety guards were to be provided for the gears in such a way that they should completely cover the gears, then, it would be impossible to work the gears. According to the appellants, the steps taken by them, namely, providing a fence in front of the lathe machine providing a lever to stop the machine and the giving of instructions to the workers not to touch the gears without stopping the lathe machine were sufficient compliance with the requirements of section 21 of the Factories Act. It may at this stage be stated that Sohan Singh himself, who was examined as A.W.4, admitted that it was not possible to provide safety covers to the gears and that if such safety-guards were provided, it would not be possible

to work the gears.

(6) The nature of the safety guards required u/s 21 of the Factories Act was considered by the Madhya Pradesh High Court in *M/s Nandlul Bhandari Mills Ltd. Indore v. Employees' State Insurance Corporation, Indore*. In that case, the employee's left hand, while working at the Printing Machine, slipped, got entangled and was crushed in the nip which existed between the central calendar drum and the copper design roller when he tried to remove the crease cause in the cloth which had moved up to the central drum. The injury was caused on account of the failure on the part of the employers to provide a safety guard on the nip which existed between the central calendar drum and the copper design roller. It was contended on behalf of the employers that it was neither practical nor necessary to provide any such guards on the nip and that neither the Factories Act nor the Rules framed there under required any such device. This contention was repelled by the High Court and it was held as follows:-

"IT is clear from this provision that the obligation imposed upon the factory by this section is absolute subject of course to what the section itself excepts. It is not open for us to water down the absolute character of the obligation by importing consideration as to practicability of the "of the requirement or the possible substantial loss of efficiency or even utility of the machine. If, Therefore, the put of the machinery in question is dangerous, the employer cannot be relieved of the obligation imposed by the section."

The High Court quoted with approval the following observations of Saiter, J., in *Davies v. Thomas Owen & Company*"

" THE obligation imposed by the Factory and workshop Act, 1901, in relation to the fencing of dangerous machinery, is absolute. It is an obligation not merely to fence, but to fence securely. The statute does not say that dangerous machinery shall be securely fenced if that is commercially practicable or mechanically possible. If a machine cannot be securely fenced while remaining commercially practicable or mechanically useful the statute in effect prohibits its use."

(7) The rule laid down in the case of *Davies v. Thomas Owen & Company* was followed by the majority of the Judges of the Court of Appeal in *Frost v. J H Summers & Sons. Ltd.* The following observations of Morris, L. J in that case can be usefully quoted :-

"It is suggested that, if the grinding machine had been further fenced, it could not have been effectively used. If this be so, it seems to me to be irrelevant. The question is not whether further fencing would have impeded use, but whether there was secure fencing. No dispensing power is provided for if there be cases where commercial practicability and compliance with the statute cannot co-exist."

The same principle was enunciated by the Madras High Court in *Employees State Insurance Corporation v. M/s Mysore Premier Metal Factory* and it was held that :-

"The words " securely fenced " are not to be interpreted as little securely fenced

or reasonably fenced or moderately fenced. The employer will not be able to defend himself by saying that it is impossible for commercial or mechanical reasons to fence the machine or part of a machine. If a machine is dangerous, the obligation is to fence, and even substitutes for fencing will not enable the employer to evade his liability."

(8) Applying the above principles to the facts of the present case, it must be held that even if it was not practicable to provide safety guard to the gears of the lathe machine, the appellants cannot be absolved from their liability for not providing the safety-guards as required u/s 21 of the Factories Act. It may be that the fence provided in front of the lathe machine could protect the workers from the gears of the lathe machine and if the employee had followed the instructions given by the employers, namely, that he should stop the lathe machine by pulling the lever provided for that purpose before touching the gears, the accident would not have occurred. But the mere failure on the part of the employee to comply with the instructions will not absolve the appellants from their liability, if such an injury is sustained by reason of the omission on the part of the employers to provide the necessary safety guards to the gears. The fact that in spite of the fencing provided by the appellants in front of the lathe machine the accident occurred only shows that the provision of the fencing was not a sufficient safety guard as required u/s 21 of the Factories Act. It must, Therefore, be held that the employee sustained the injury only by reason of the negligence of the appellants in not providing the safety guards to the gears of the lathe machine. As already stated, there is no dispute with regard to the quantum of the compensation payable to the respondent-corporation in respect of the injury sustained by the employee.

(9) In the result, the appeal is dismissed. But in the circumstances, I do not think it necessary to award any costs to the respondent-corporation.