
(1970) 02 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 6 of 1964

Bishen Dass Nagina Mull

APPELLANT

Vs

Kehar Singh and Another

RESPONDENT

Date of Decision : 12-02-1970

Acts Referred:

Workmens Compensation Act, 1923 — Section 17, 30, 4, 4(1), 6

Citation : (1970) 02 P&H CK 0011

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : A.S. Sarhadi and N.S. Bhatia, for the Appellant; Bhagirath Dass and S.K. Hirajee, for the Respondent

Final Decision : Dismissed

Judgement

C.G. Suri, J.—The Commissioner appointed under the Workmen's Compensation Act, 1923, at Amritsar, has, by his order dated the 16th November, 1963, awarded to the Respondent workman a further sum of Rs 1336/-even though the said workman had, in 1961, accepted from his employers, the Appellant-company, a sum of Rs. 624/- in full and final satisfaction as compensation for injuries sustained by him in an accident in the course of his employment. The employer-company feels aggrieved and has come up in appeal.

2. Kehar Singh Respondent was working as a foreman die-fitter (Mistri) in the factory of the Appellant-company at a salary of Rs. 260/-per month. On the 16th April, 1961 he tried to fit a belt on a pulley while the machine was working and his left arm was caught in the belt The accident resulted in the fracture of the left arm and the loss of one finger of the left hand. He was medically examined by the Civil Surgeon at Amritsar on 25th September 1961 and the disability was described to be temporary and partial to the extent of 40 percent. He was, however, advised to get himself medically examined again after six months. In the meanwhile he filed an application, copy Exhibit R/2, on 2nd October 1961 against his employers for compensation. This application purports to have been

made under the Payment of Wages Act. There may appear to have been some confusion as to the capacity in which this application was dealt with and disposed of. Certain copies Exhibits R/1 to R/4 obtained from the proceedings show that the Presiding Officer had sometimes been describing himself as Commissioner under the Workmen's Compensation Act and at other times as an authority under the Payment of Wages Act. This could also be due to the careless use of the rubber stamps or the typewriter by the officials of the Court concerned.

3. In the application dated the 2nd October 1961, copy Exhibit R/2, the Respondent had claimed a sum of Rs. 555/-. Paragraph 3 of the petition gives the details as to how this amount is made up and this paragraph reads as follows:

I have served the Respondent's concern as a Mistry (Mechanic) @ monthly salary Rs. 260/- for one year, and I was retrenched on 5.6.1961 without one month notice. The fact is that I met with an accident in the course of employment on 16.4.61 and my left arm was fractured. The Respondents put me under the treatment one private practitioner wrestler from 16.4.61 to 29.5.61. On 30.5.61 I myself was got examined by Dr. Karma Singh Orthopaedic Surgeon of V.J. Hospital and he advised me to get treatment from the hospital and, therefore, I remained outdoor patient up to 7.7.61, and I was admitted in hospital on 8.7.61. and was discharged on 14.8.61 with plaster on my left arm till 8.9.01 and I have not been paid wages for the following periods 1.6.61 to 4-6-61 @ Rs. 260/-P.M.=Rs. 35/- and one month notice pay Rs. 260/- and 15 days wages as compensation for the earned leave Rs. 130/-, and 15 days wages as retrenchment compensation Rs 130/-, total Rs. 555/-

It may appear that the matter had also come up on the 5th September 1961 before the Labour Inspector and Conciliation Officer and Kehar Singh Respondent had accepted a sum of Rs. 433.32 nP and issued the receipt Exhibit R/1. It is mentioned in this receipt that the amount was being accepted in full and final settlement of the Respondent-workman's claim. In spite of this receipt the Appellant had filed an application, copy Exhibit R/2, on the 2nd October 1961 and had received a further sum of Rs. 190.68 nP. vide receipt Exhibit R/4. It is mentioned in this receipt dated 1.12.1961 that the Respondent had no further claim against his employer. The receipt Exhibit R/4 is addressed to the Commissioner under the Workmen's Compensation Act but the designation of the officer given under the statement made by the Respondent, copy Exhibit R/3, the same day describes the Presiding Officer as an authority under the Payment of Wages Act. The application Exhibit R/2 settled on this date purported to have been made under the Payment of Wages Act.

4. About three months after this settlement, the Respondent was medically examined a second time on 29th of March 1962 and his disability was described as permanent and partial to the extent of 35 percent. It may also appear that the Respondent had also undergone a surgical operation before the second medical examination. It was felt by the Respondent that according to Schedule IV of the Workmen's Compensation Act, the Appellant was entitled to a much higher

amount if his injuries were to be taken as permanent. He, therefore, filed the present application on 16.4.1962. u/s 4 of the Workmen's Compensation Act claiming a sum of Rs. 1960/- as compensation for the injuries sustained by him. These injuries were described to have resulted in a permanent disability. Notices of the claim were said to have been served on the employers by registered post and to have remained unsettled.

5. Before the Commissioner the Appellant had disputed the averment that the injury had been sustained by the Respondent in the course of his employment but the finding of fact of the Commissioner on this point has not been challenged before me in this appeal because of the first proviso to Section 30 of the Act. The only question that has been argued before me is whether the Respondent could have been awarded any further sum as compensation for the injuries suffered in the accident after he had settled with his employers in the year 1961 and received a sum of Rs. 644/- in full and final satisfaction of the claim.

6. The various clauses of Sub-section (1) of Section 4 of the Act may suggest that the injuries have been classified under four separate heads. Injuries suffered in an accident can either result in temporary or permanent disablement. This disablement of either kind can then be total or partial. The extent of disablement is generally expressed in percentages. Disablement of each kind is dealt with separately in the various clauses of Section 4(1). The cause of action of an injured workman would differ accordingly as the injury falls under one or the other clause. As regards temporary disablement, the injured workman is dealt with by separate provisions of the Act and compensation is made payable half-monthly and for a limited period which cannot exceed 5 years. As there are greater chances of improvement or deterioration of the condition of the injured workman where the disablement is temporary, Section 6 provides for review of orders of half-monthly payments. Section 7 even provides for the parties agreeing on these periodical payments being commuted or redeemed into a lump sum payment by mutual agreement. There are no provisions corresponding to Sections 6 and 7 of the Act so far as permanent disablements are concerned. u/s a review is allowed where an order has been passed in respect of a temporary disablement. Sub-section (2) of Section 6 actually contemplates a case where the accident is later found to have resulted in permanent disablement. It provides that half-monthly payments can in such cases be converted to a lump sum to which injured workman may be entitled according to Schedule where his disablement is later discovered to be of a permanent nature. In such a case, the amount already paid to the workman on the assumption that his disablement is temporary, can be deducted from the amount to which he may be found entitled when his injury deteriorated into a permanent disablement.

7. Even though the facts in *Angus Co. Ltd. Vs. Chouthi*, are not exactly the same, the case may afford us a useful illustration. In that case Chouthi Workman had suffered an injury which was originally described as permanent disablement though partial to the extent of 60 per cent. His claim was settled at a sum of Rs.

1512/- on the assumption that the injury had resulted in permanent and partial disability and that the workman would be able to resume light work after some months.

8. The workman rejoined duties a few months later and was put on light work. He could not carry on his duties and was medically examined and operated on again. A doctor of the employer-company declared the workman unfit for further service and it was, therefore, felt by the workman that the compensation that he had already received under a mutually agreed upon settlement was inadequate. The workman, therefore, filed another claim alleging that his disability had since been aggravated and had become a total permanent disability. The fresh claim that he filed was for a sum of Rs. 4200/- on the assumption that the permanent disability deteriorated from 60 percent to cent percent. The Commissioner accepted this contention and granted the disabled Workman a further compensation of Rs. 10 8/- It was one of the contentions of the employer-company in appeal that there had been no further deterioration in the condition of the injured workman after the first settlement. It was argued that the disability contemplated by the Act was the disability in relation to the earning capacity and that the physical condition came only, in so far as the earning capacity was affected thereby; It was, however, found that the personal injury suffered by the workman had in fact become aggravated after the date of the earlier settlement and that it had increased from 60 per cent to total loss. The appeal filed by the employer-company was; however, accepted on the ground that a personal injury involving permanent disablement could be the subject-matter of only a single adjudication and that there was no provision corresponding to Section 6 of the Act for review of an order of compensation passed in respect of a permanent disability. Section 17 of the Act was also found to be of little help to the workman. It was, however, recognised that the Act had made an exception in the case of temporary disablements and there could be subsequent adjustments of half-monthly payments of compensations on the assumption that the injury had resulted in temporary disablement. In that case, the Court expressed its inability to help the workman because the case had already been adjudicated upon once on the assumption that the disability suffered was of a permanent nature. It was only out of a desire to attach finality to the orders and adjudications of Court and Tribunals, whether of general or special jurisdiction, that a second order on almost the same cause of action was considered undesirable in the absence of specific provisions in the Act for a review of the earlier order.

9. The learned Counsel for the Appellant, Mr. Sirhadi, had tried to stress the same point by citing Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, , and Daryao and Others Vs. The State of U.P. and Others, , but the general principles of res judicata are so well established that they are not disputed in the present case.

10. The facts in our case are, however, altogether different. Here the first

settlement was made if, at all, on the assumption that the injury had resulted in temporary disablement. Principles for settling claims for compensation for such injuries resulting in temporary disablements are altogether different from the considerations that prevail in the settlement of claims for injuries involving permanent disablement. The Act actually makes a specific provision in Section 6(2) for a review of such orders where a temporary disablement deteriorates into a permanent disability. Section 17 of the Act would also be applicable in a case like the present and an earlier agreement or settlement notwithstanding, the workman can claim the amount to which he is entitled as compensation for permanent disability by arguing that he could not possibly contract himself out of the benefits of the Act. There can be no waiver of the protection afforded to a workman under the Act. His case may appear to be similar to the case of a tenant who cannot contract himself out of the benefits of rent control legislation on the assumption that the landlord has a distinct advantage over the tenant in view of the position as regards supply and demand for residential accommodation in urban areas. Labour laws have also been enacted on the assumption that a workman cannot deal with his capitalist employer on equal terms and that he should not lose the benefits conferred on him by statute notwithstanding any agreement made by him with his employers. The settlement in the year 1961 was in respect of the claim for compensation arising out of a temporary disability. At that time, the workman could not have anticipated that his condition would deteriorate into a permanent disability. It cannot be said that he had pressed or urged his claim to a disability which was yet to become permanent by subsequent deterioration in his condition. It cannot be said that the workman could have or should have pressed his claim to a permanent disablement when the permanency was to intervene by subsequent deterioration. Subsequent events may appear to have changed the very nature of the workman's cause of action and the first settlement arrived at in 1961 was only in the respect of the claim that could possibly be made in respect of the temporary injury as it then was. This settlement did not bar a claim to a further amount because of the subsequent deterioration in the condition making the disability of a permanent nature, Law specifically provides for a review of such orders.

11 The appeal has no force and is hereby dismissed I however, leave the parties to bear their own cost in this case.