

(2000) 01 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2050 of 1997

B.T. Shipping London Ltd. and another

APPELLANT

Vs

Smt. Arati Narayanan and others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Railways Act, 1989 — Section 2, 3, 4

Workmens Compensation Act, 1923 — Section 17, 19(2), 2(4), 22, 4

Citation : (2001) ACJ 2096 : (2000) 2 ALLMR 86 : (2000) 3 BomCR 381 :
(2000) 86 FLR 901 : (2000) 2 MhLj 832

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : V.C. Kotval, instructed by Bhatt and Saldanha, for the Appellant; Ms. Shilpa Karbhari, instructed by y Mihir Desai and S.M. Vaidya, for the Respondent

Judgement

R.M. Lodha, J.—The order passed by the 2nd Additional Commissioner for Workmen's Compensation, Mumbai on 4-11-97 in Application No. (W.C.A.) 191/A-50 of 1997 whereby he directed the petitioners to deposit an additional amount of Rs. 27,00,635/- in the Court is impugned by the petitioners under Article 226 of the Constitution of India.

2. The 1st petitioner is a company incorporated under the laws of England and is based in the United Kingdom. The 2nd petitioner is an Indian company which operates as an agent on behalf of various shipping companies including the company known as B.T. Fleet Personnel Ltd., (Burmuda). The 1st respondent is the widow of Shri Shankara Raman Narayanan who was employed by B.T. Fleet Personnel Ltd., through 2nd petitioner as their managers. The employee died during accident on board m.v. Nautilus on 9-8-96. The 2nd, 3rd and 4th respondents are the father, mother and elder sister of the deceased employee. The said Narayanan was employed in accordance with the service conditions which have been annexed by the petitioners as Exhibit "C" pages 47 to 67 of the paper book. It is the case of the petitioners that the accident in which the

employee died on 9-6-96 was not caused due to any fault of the employer despite that they took all necessary steps to provide for the heirs of the deceased and accordingly on 25-2-1997 the 2nd petitioner in their capacity as agents of B.T. Fleet Personnel Ltd., (Burmuda) deposited a sum of Rs. 34, 13,330/- in the Court of Workmen's compensation. This sum of Rs. 34,13,330/- included the compensation amounting to Rs. 33,18,240/- being the equivalent of U.S. \$ 93,000/-, and a sum of Rs. 95,050/- equivalent to U.S. \$ 2,661,96 towards balance wages. The compensation to the tune of U.S. \$ 93, 000/- was arrived at, according to the petitioners, by adopting the beneficial interpretation of the appointment letter and service conditions applicable to deceased employee. On 24-4-97 the 1st respondent i.e. widow of the deceased employee made an application seeking leave to withdraw the amount deposited by the employer. She also disclosed the name of the father, mother and sister of the deceased without disputing the amount deposited by the employer. The father, mother and sister of the deceased employee who are respondents 2, 3 and 4 respectively herein made an application on 28-4-97 before the concerned Workmen's Compensation Commissioner stating that the 4th respondent i.e. the sister was only entitled to receive the full amount deposited by the employer to the exclusion of all others including the widow of the deceased. Thereafter on 4-9-97 the father, mother and sister of the deceased employee made further application seeking determination of increased compensation u/s 22-A of Workmen's Compensation Act, 1923 (for short Act of 1923). Two separate replies were filed one by the 1st petitioner and the other by the 2nd petitioner. The 1st petitioner denied that they were employer of the deceased or in any manner connected with the matter. In the reply filed by the 2nd petitioner, justification of depositing the amount to the tune of Rs. 34, 13,330/- was given stating that the amount so deposited is far larger than is payable. The learned Additional Commissioner for Workmen's Compensation after hearing the parties passed the impugned order directing the petitioners to deposit a sum of Rs. 27,00,635/- giving rise to the present writ petition.

3. Mr. Kotwal, the learned Senior Counsel appearing for the petitioners assailed the impugned order by making two-fold submission: (i) that the Workmen's Compensation Commissioner has no jurisdiction in the matter since the Workman's Compensation Act, 1923 itself was not application in the facts of the case because the deceased was not a workman within the meaning of section 2(1)(n) of the said Act and (ii) even if the Workman's Compensation Act is held to be applicable and that the Workman's Compensation Commissioner is held to have jurisdiction, he could not have ordered deposit of amount in exercise of his power u/s 22-A exceeding the compensation prescribed under the Act.

4. On the other hand, Mr. Vaidya, the learned Counsel appearing for respondent Nos. 2, 3 and 4 justified the impugned order and submitted that the deceased was workman within the meaning of section 2(1)(n) of the Act of 1923 and the said Act was fully attracted. He submitted that it was the 2nd petitioner who voluntarily deposited the amount of Rs. 34,13,330/- for disbursement of

compensation to the dependents of the deceased employee. Upon deposit of the amount of compensation, the Workmen's Compensation Commissioner had jurisdiction to find out the adequacy of the said amount in exercise of his powers u/s 22-A of the Act of 1923.

5. From the appointment letter dated 15-7-96 (Exhibit B) it is apparent that the deceased employee was appointed by 2nd petitioner on behalf of B.T. Fleet Personnel Ltd. The service conditions of the deceased are stated in Exhibit C and that also shows that the deceased employee was employed by B.T. Fleet Personnel Ltd., (Burmuda) through its managers, Selandia Marine Services Pvt. Ltd., (2nd petitioner herein). The deceased employee died in an accident on board the vessel on 9-8-96 which admittedly took place outside India. In the back drop of these facts it is to be found out whether the deceased employee can be said to be a workman u/s 2(n) of the Act of 1923. The Act of 1923 defines employer, seaman, and workman which read thus:-

2(1)(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into contract of service or apprenticeship, means such other person while the workman is working for him;

.....

2(1)(k): "seaman" means any person forming part of the crew of any ship, but does include the master of the ship:

.....

2(1)(n): "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business) who is

(i) a railway servant as defined in (Clause (34) of section 2 of the Indian Railways Act, 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule I, or

(ia)(a) a master, seaman or other member &f the crew of a ship,

(b) a captain or other member of the crew of an aircraft.

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

(d) a person recruited for work aboard by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, as the case may be, is registered in India.

(ii) employed in any such capacity as is specified in Schedule II."

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing: but does not include any person working in the capacity of a member of the Armed Forces of the union; and 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."

6. What is sought to be urged by Mr. Kotwal, the learned Senior Counsel appearing for the petitioners is that though the deceased was employed outside India but since he was employed by a company not registered in India nor the ship is registered in India, the deceased employee would not fall within the definition of the workman. I am not persuaded by the submission of learned Senior Counsel. In view of the facts obtaining in the present case, the deceased has to be held "workman". The deceased employee at the time of accident was indisputably member of the crew of the ship m.v. Nautilus. There is also no dispute that the deceased employee was seaman as defined u/s 2(k) who is specified in Schedule II and was employed by B.T. Fleet Personnel Ltd., through the 2nd petitioner i.e. Selandia Marine Services Pvt. Ltd., section 2(e) of the Act of 1923 which defines employer shows that employer includes its managing agent. A perusal of the appointment letter as well as service conditions of the deceased clearly show that the 2nd petitioner is the employer within the definition of "employer" as provided in section 2(e) being managing agent of B.T. Fleet Personnel Ltd. In the facts and circumstances of the case, therefore, I have no hesitation in holding that the deceased was a workman and the 2nd petitioner employer and that the provisions of the Workmen's Compensation Act, 1923 are attracted. In this view of the matter the first contention of the learned Senior Counsel appearing for the petitioners is overruled.

7. Adverting now to the 2nd contention raised by the learned Senior Counsel for the petitioners, I find that there is substance in the said contention. Section 2(c) defines "compensation" means compensation as provided for by this Act . Chapter II of the Act of 1923 deals with workmen's compensation. Sections 3 and 4 which relate to employer's liability for compensation and amount of compensation, which are relevant for the present purpose, read thus:

"3.(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding 10 (three) days:

(b) In respect of any II (injury not resulting in death, caused by) an accident which is directly attributable to-

(i) the workmen having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

(2) If workman employed in any employment specified in Part A of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not in less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of one or more employers in any employment specified in Part C of Schedule III, for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment):

(Provided that if it is proved,-

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment: the contracting of disease shall be deemed to be an injury by accident within the meaning of this section :

Provided further that, if it is proved that a workman who having served under any employer in an employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.)

(2A) If a Workman employed in any employment specified in Part C of Schedule

III contracts any occupational disease peculiar to that employment the contracting, where is of deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.)

(3) The State Government in the case of employment specified in Part A and Part 8 of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, after giving by notification in the Official Gazette, not less than three months notice of its intention so to do may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational disease peculiar to those employments respectively, and thereupon the provision of sub-section (2) shall apply within the State or the territories to which this Act extends, as the case may be, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments).

(4) Save as provided by I (sub-sections (2), (2A) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is 2(***) directly attributable to a specify injury by accident arising out of and in the course of his employment).

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been, come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

4. Amount of compensation.---(1) Subject to the provision of this Act, the amount of compensation shall be as follows, namely:-

(a) where death result from the injury an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor:

or

an amount of twenty thousand rupees, whichever is more:

(b) where permanent total disablement results from the injury, an amount equal to fifty per cent of disablement results from the injury, the monthly wages of the injured workman multiplied by the relevant factor:

an amount of twenty-four thousand rupees, whichever is more:

Explanation I. For the purposes of Clause (a) and Clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due:

Explanation II. Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only;

(c) Where permanent partial disablement results from the injury.

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury:

Explanation I. Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II. In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning in relation to different injuries specified in Schedule I:

(d) Where temporary disablement, whether total or partial results from the injury,- a half-monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

(2) The half-monthly payment referred to in Clause (d) of sub-section (1) shall be payable on the sixteenth day-

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during period of five years, whichever period is shorter :

Provided that-

(a) there shall be deducted from any lumpsum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation- Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of Clause (a) of the proviso.

(3) on the ceasing of the disablement before the date on which any half monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

8. Section 22-A empowers Workmen's Compensation Commissioner to require further deposit in case of fatal accident which reads thus:-

"22A. (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may, make an award determining the total amount payable, and requiring the employer to deposit the deficiency."

9. A conjoint reading of the aforesaid sections would show that the Workmen's Compensation Commissioner can order the employer to deposit further sum if in his opinion the amount so deposited is insufficient as provided under the Act. Schedule IV u/s 4 provides the factors for working out lump sum amount for compensation in case of total disablement and/or death. Obviously, in the very scheme of the Act, 1923, the Workmen's Compensation Commissioner cannot order the employer to deposit the amount which exceeds the amount prescribed under the Act. In other words the scale of compensation set out in Schedule IV u/s 4 is the compensation that can be awarded by the Commissioner under the Act and not beyond it. There is no dispute before me that the amount of Rs. 34,13,330/- deposited by the 2nd petitioner before the Workmen's Compensation Commissioner is far larger than the compensation prescribed under the Act for the death of the deceased workman. The objective of the Workmen's Compensation Act is to ensure that in the case of injury or

permanent disablement or death of a workman by accident out of and in the course of employment, his employer pays him compensation in accordance with the provisions contained in the Workmen's Compensation Act and such employee who has suffered injuries or permanent disablement or the dependants of the deceased employee are not left high and dry. Therefore, the compensation that can be awarded by the Workmen's Compensation Commissioner has to be in accordance with the compensation prescribed under the Act of 1923 and not exceeding thereto. Even in exercise of his powers u/s 22-A the Workmen's Compensation Commissioner can only order the employer to deposit further amount if he finds and is satisfied that the amount deposited by the employer is less than the compensation prescribed under the Act. The adequacy of deposit has to be seen by the Workmen's Compensation Commissioner to the extent and in the light of compensation prescribed under the Act and not beyond it. Mr. Vaidya, the learned Counsel appearing for respondent Nos. 2, 3 & 4 referred to sections 17 and 19(2) of the Act and urged that it is open to the employer to enter into an agreement for the compensation exceeding the amount of compensation provided under the Act. According to him, in the service conditions there was an agreement that in the event of death or permanent disability resulting from injuries/accidental causes whilst on board the vessel, the employer would provide cover in accordance with Appendix E to a maximum of three and a half times annual pay and, therefore, the dependants- respondent Nos. 2, 3 & 4 are entitled to compensation to three and a half times annual pay of deceased and, therefore, the Commissioner did not commit any error in directing the employer to deposit further sum. I am afraid sections 17 and 19(2) which have been relied upon by Mr. Vaidya in support of his contention does not support him at all. Section 17 provides that any contract or agreement whereby a workman relinquishes any right of compensation from the 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 this Act. The service conditions in which it has been agreed by the company to provide cover to the deceased in accordance with Appendix E to a maximum of three and a half times annual pay is not related to section 17. It is open to the dependants to enforce their claim as per the agreement in the service conditions in accordance with law but it cannot empower the Workmen's Compensation Commissioner to award or order for deposit of compensation of that amount which exceeds the compensation prescribed under the Act. Section 19(2) of the Act of 1923 only provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. For enforcement of the Clause in the service conditions whereby the employer has undertaken to provide cover in accordance with Appendix E to a maximum of three and a half times annual pay can be enforced through Civil Court and jurisdiction of Civil Court to that extent cannot be said to be barred u/s 19(2). So far as the Workmen's Compensation Commissioner under the Act of 1923 is concerned he is only empowered to award compensation

or order deposit of compensation as prescribed under the Act and not exceeding thereto.

10. Mr. Kotwal, the learned Senior Counsel appearing for the petitioners fairly stated that the amount of Rs. 34,13,330/- deposited by the petitioners in the Court of Workmen's Compensation Commissioner which has been withdrawn by the dependants of the deceased shall not be claimed back by petitioners in any manner and that in view of the present order the petitioners shall not raise any plea in the suit or the proceedings that may be initiated by the dependants of the deceased for further compensation that the Workmen's Compensation Commissioner alone had jurisdiction in that matter. He however, made it clear that in case any suit or proceedings are initiated by the dependants of the deceased for compensation over and above that has already been paid by the petitioners, it would be open to the petitioners to raise all other pleas permissible under the law including the plea of limitation in resisting such suit or proceedings.

11. For the reasons aforestated, the writ petition is allowed. The order dated 4-11-97 passed by the 2nd Additional Commissioner for Workmen's Compensation in Application No. (WCA) 191/A-50 of 1997 is quashed and set aside.

12. The amount of Rs. 13,16,520/- deposited by petitioners with the Additional Commissioner pursuant to the interim order of this Court along with interest accrued, if any, may be withdrawn by the petitioners after a period of 8 weeks.

13. Rule is made absolute in aforesaid terms. No costs.

14. Parties may be provided ordinary copy of this order duly authenticated by the Associate of this Court on payment of usual copying charges.

15. Certified copy expedited.

16. Petition allowed.