(1992) 03 KAR CK 0056

In the Karnataka High Court

Case No : M.F.A. No. 1997 of 1985

Cement Corporation of India Ltd. APPELLANT

Vs

Begambee RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:
Workmens Compensation Act, 1923 — Section 30, 5

Citation : (1992) 65 FLR 216 : (1992) ILR (Kar) 1643

Hon'ble Judges : Venkatachala, J;Vasantha Kumar, J

Bench : Division Bench

Advocate : B.C. Prabhakar, for Bhoopalam Associates, for the Appellant; D. Leelakrishnan, for R-1 to R-6, for the Respondent

Judgement

Venkatachala, J.—In this appeal under Clause (a) of Sub-section (1) of Section 30 of the Workmen''s Compensation Act, 1923 (for short ''the Act''), the substantial question of law raised for our Decision since relates to the method of calculating monthly wages of a workman u/s 5 of the Act and arriving at the amount of compensation for the death of the workman arising from an injury, we propose to consider the same by stating the undisputed material facts, at the very outset.

2. Appellant-Cement Corporation of India Ltd., is the employer. Respondents 1 to 6 are the dependents of Shahabuddin, the appellant''s workman who died in an accident arising out of and in the course of his employment in the appellant''s Cement Factory on 23-7-1984. The workman at the time of his death, was aged 37 years.

3. Respondent-1, the wife, and respondents 2 to 6, the children of the deceased workman-Shahabuddin, made a claim petition before the Commissioner for Workmen''s Compensation, Gulbarga (for short ''the Commissioner''), claiming compensation for the death of Shahabuddin, seeking calculation of the amount of compensation payable, having regard to his monthly wages of Rs. 752-48 Ps. The Commissioner, who entertained that claim petition and enquired into it, came

to the conclusion that the deceased workman''s monthly wages, on the basis of which the compensation had to be calculated, was according Clause (a) of Section 5 of the Act. On such calculation, the Commissioner fixed Rs. 76,856-00 as the amount of compensation payable on account of the death of the workman, by his award dated 28-6-1985. It is that award, the validity of which is questioned by the employer in the present appeal by raising the substantial question of law, to which we have already adverted.

4. The material provisions of the Act, with reference to which the said substantial question of law needs our consideration, are;

"Section 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 (Chapter-II).

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

(a) where death results from the injury

an amount equal to forty percent of the monthly wages of the deceased workman multiplied by the relevant factor;

or

an amount of twenty thousand rupees whichever is more.

(b)..

Explanation I: For the purpose 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.

SCHEDULE IV (See Section 4)

Factors for working out lump sum equivalent of compensation amount in case of permanent disablement and death.

Completed years of age on the last birth-day of the workman immediately preceding the date on which the compensation fell due.

Factors

1

2

Not more than 16 ..

..

..

..

238-54

XX

XX

XX

XX

XX

XX

36

..

..

..

192-14

Section 5: In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month''s service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated as follows, namety:-

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;

(c) In other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under Clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer, who is liable to pay compensation, divided by the number of days comprising such period.

Explanation: A period of service shall, for the purposes of this Section shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days."

5. Details of undisputed wages received by the deceased workman from the employer during a period of 12 months immediately preceding the accident, which caused his (workman''s) death, are these:

SALARY & WAGES FROM AUGUST 1983 TO JULY 1984

Rs. Ps.

August 1983

901-65

September 1983

943-85

October 1983

1,083-49

November 1983

989-20

December 1983

792-47

January 1984

725-80

February 1984

1,058-30

March 1984

921-13

April 1984

Nil

May 1984

Nil

June 1984

Nil

July 1984 (23 days only)

540-50

7,956-39

(NOTE:-Wages of Rs. 552-00 mentioned against the month of July 1984 as received by the deceased workman covers 23 days of that month, in that, the workman died on 23rd July 1984 in the accident arising out of and in the course of his employment).

6. Deceased workman, for whose death compensation is claimed, died as a result of personal injury in an accident arising out of and in the course of employment of the employer and the compensation for his death is payable u/s 3(1) of the Act, is undisputed.

7. Monthly wages of the deceased workman, on the basis of which amount of compensation, which becomes payable according to Section 4 of the Act, has to be calculated with reference to the provisions contained in Section 5 of the Act, is not disputed. Then, it has to be seen how the monthly wages of the deceased workman concerned in the instant case, has to be calculated u/s 5 of the Act. Clause (a) of Section 5 is not attracted for calculating the monthly wages of the workman here since he was not in the service of the employer during a continuous period of not less than 12 months immediately preceding the accident on 23-7-1984. We have to hold so, for the reason that the period of service for the purpose of Section 5 as contained in its ''Explanation'', shall be deemed to be continuous only when it has not been interrupted by a period of absence from work exceeding 14 days.

8. Clause (b) of Section 5 of the Act would have been attracted to arrive at the monthly wages of the deceased workman as the whole of the continuous period of service immediately preceding the accident during which the petitioner was in the service of the employer, was less than one month if the information as to the monthly wages of a workman employed in the same work or in its absence the monthly wages of the Workman of similar work employed in the same locality 12 months immediately preceding the date of accident, was available. But, for want of necessary information, the calculation of monthly wages of the workman with whom we are concerned, cannot be made under Clause (b) [See: Clause (c) of Section 5].

9. From the details adverted to by us relating to the wages paid by the employer to the deceased workman during the month of July 1984 immediately preceding the accident, such wages work out to Rs. 552-00 for the preceding continuous period of 23 days. This amount if it is divided by the number of days comprised of the period, that is, 23 days, the same will work out to the daily wages of Rs. 24-00. This daily wages of Rs. 24-00 if has to become the monthly wage of the workman as provided under Clause (c), it must be thirty times of that amount of

daily wages. If so calculated, the monthly wages of the deceased workman works out to Rs. 720-00 and this monthly wages calculated u/s 5 would necessarily form the basis for fixation of the total amount of compensation payable for the death of the deceased workman.

10. As seen from Section 4(1)(a), the amount of compensation payable to the workman where his death results from the injury would be an amount equal to 40 percent of the monthly wages of the deceased workman multiplied by the relevant factor or the amount of Rs. 20,000/- which ever is more: Again, as seen from the Explanation I to that Sub-section (1) of Section 4, for the purpose of Clause (a), the "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 birth-day immediately preceding the date on which the compensation fell due.

11. Now, if we have regard to the Schedule to which we have adverted earlier, the age of the deceased workman being 37 years the relevant factor would be 192.14, and 40% of the monthly wages of the deceased workman being Rs. 288-00 (192-14 has to be multiplied by Rs. 288-00), the resultant figure of such multiplication would be Rs. 55,624-32 Ps., which may be conveniently rounded of Rs. 55,625-00. It is the said figure of Rs. 55,625-00 which would be the ultimate compensation payable to the dependents of the deceased workman. This would be the correct method in which the monthly wages of the workman has to be calculated and the total amount of compensation payable to the deceased workman has to be assessed or determined.

12. The calculation made of monthly wages and the amount of compensation arrived on the basis of such monthly wages by the Commissioner being different from what we have stated hereinbefore, the same cannot be sustained.

13. In the result, we allow this Appeal partly and modify the award under Appeal determining the amount of compensation payable to the respondents (dependents of the deceased workman) to be Rs. 55,625 -00 instead of Rs. 76,856-00 and the same becomes payable by the employer to the respondents with interest at 6% per annum till the date of deposit. If the payment of that amount to the respondents is not yet paid, the same shall be paid or deposited for payment among respondents 1 to 6 in the proportion 2:1:1:1:1:1. If any of the respondents is a minor, that amount shall be kept in a Fixed Deposit till the attainment by the minority of the age of majority, in any nationalised Bank and first respondent shall become entitled to withdraw the interest payable thereon during the minority of those respondents for their benefit. If the appellant-employer has deposited before the Commissioner in pursuance of the award under appeal, and if that amount is in excess of the amount which has become payable to the respondents under this Judgment, the same shall be refunded to the appellant.

14. This Appeal is disposed of accordingly.

