
(1986) 01 GUJ CK 0014
In the Gujarat High Court
Case No : First Appeal No. 872 of 1985

Chiman Surakhia Vasava

APPELLANT

Vs

Ahmed Musa Ustad and Others

RESPONDENT

Date of Decision : 06-01-1986

Acts Referred:

Constitution of India, 1950 — Article 39A, 51A
Workmens Compensation Act, 1923 — Section 23, 25
Workmens Compensation Rules, 1924 — Rule 41

Citation : (1986) 2 ACC 9 : (1987) ACJ 161 : (1987) 54 FLR 85 : (1986) 2 GLR 1083 : (1993) 3 LLJ 431

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : V.J. Desai, for the Appellant; R.H. Mehta, for R2 and R1, for the Respondent

Final Decision : Allowed

Judgement

Ravani, J.—This appeal is filed by an injured workman, who as a result of the decision given by the learned Commissioner for Workmen's Compensation has become an employee without there being an employer. Such is the astounding result brought about by the learned Commissioner by taking hyper-technical view and by following the strict principles of rules of pleadings and Evidence Act which are not applicable to the cases under Workmen's Compensation Act, 1923.

2. The learned Commissioner for Workmen's Compensation, Bharuch, (the learned Civil Judge, Senior Division, who is exofficio Commissioner) has rejected the application of the injured workman for compensation solely on the ground that there was no sufficient proof to show that the workman was employed either by respondent No. 1 truck owner or respondent No. 3 quarry owner. On January 6, 1983 when the workman was engaged in lifting the stones from the quarry belonging to respondent No. 3 and filling the stones in the truck belonging to respondent No. 1, a stone accidentally fell on his hand. As a result of this

accident, he received injury on his left hand index finger. Two phalanges of left index finger had been crushed. Ultimately both the phalanges had to be amputated. The medical certificate issued by the appropriate medical authority shows that the workman had suffered 11% permanent partial disability on account of the accidental injury received by him. The workman filed an application for compensation. In the application he alleged that he was employed by respondent No. 1 as well as by respondent No. 3. Respondent No. 2 is the Insurance Company with which the truck belonging to respondent No. 1 was insured. Therefore, respondent No. 2 Insurance Company has also been joined as party in the application. The truck owner as well as the quarry owner resisted the claim inter alia on the ground that the appellant workman was not their employee. Respondent No. 2. Insurance Company also supported the case put forth by the truck owner, i.e. Respondent No. 1. After recording evidence, the learned Commissioner for Workmen's Compensation (hereinafter referred to as "the Commissioner") came to the conclusion that the workman had received injury on account of : the accident which arose out of and during the course of employment. He also came to the conclusion that daily wage of the workman was Rs. 10 per day. But he found that the workman had failed to prove as to with whom he was employed and hence rejected the application filed by the workman as per. his judgment and order dated December 15, 1984 against which this appeal is filed by the unsuccessful workman.

3. The learned Commissioner read the application filed by the workman as if he was construing pleadings drafted by highly trained advocates assisted by solicitors. He found discrepancy between the averments made in the application and the evidence of the workman. According to him, the workman had stated in his application that he was employed by the truck owner as well as by the owner of the quarry while in his evidence he stated that he was employed by the truck owner only. Despite the fact that there was no contrary evidence led by either the truck owner or the owner of the quarry, the learned Commissioner found this discrepancy to be fatal to the case of the workman and hence rejected the application.

4. Thus a funny, but a very unfortunate, situation has arisen. Here is an employee without there being an employer. The person who took work from him and paid wages to him, either the truck owner or the owner of the quarry, has found it convenient to disown him. Both of them have been able to create a smoke screen of technicalities and the learned Commissioner has not been able to come out of the hide-bound thinking influenced by the provisions of the CPC and Evidence Act with which he is more familiar as Civil Judge, Senior Division. He ought to have realised that the functions and duties of the Commissioner are radically different than that of a Civil Judge, Senior Division. It is unfortunate that the learned Commissioner who appears to have been obsessed by the procedural rules and technicalities of CPC and Evidence Act is not sufficiently aware about the underlying principles and object of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). In the statement

of objects and reasons articulated at the time of moving the Bill which ultimately resulted in passing of the Act, it is stated:

"...The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents."

In the statement of objects and reasons, it is further stated:

"The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease....

....At the same time, on unanimous recommendation of the committee, provision has been made for special Tribunals to deal cheaply and expeditiously with any disputes that may arise, and generally to assist the parties in a manner which is not possible for the ordinary Civil Courts."

5. Assuming for a moment that no change whatsoever has taken place since the year 1923, even then it was not permissible to the learned Commissioner to adopt a pedantic and indifferent view of the matter and frustrate the claim of the workman. The limited extent to which injured workman or his dependents should be compensated was recognised even by the colonial powers. They also felt that there was a need to make provision for "special Tribunals to deal cheaply and expeditiously "with disputes regarding compensation cases. They had also felt that it was necessary "generally to assist the parties in a manner which is not possible for the ordinary Civil Courts." That which was recognised by the foreign rulers, is unfortunately, not even read and taken care of, by the learned Commissioner. This is likely to be the position with regard to all the Civil Judges, who are appointed as exofficio Commissioner for Workmen's Compensation. The situation is lamentable because after the dawn of independence and with the enactment of the Constitution, there is a constitutional command to all the organs of the State including the Judiciary, to see that justice social and economic is done to the people who are in need of the same. The learned Commissioner ought to have realised that it was his fundamental duty to respect the ideals of the Constitution [Article 51A(a)]. One of the objects and ideals set forth in the Constitution is to secure to all its citizens socio-economic justice. Moreover, as provided under Article 39-A of the Constitution, the State is required to secure the operation of the legal systems so as to promote justice on the basis of equal opportunity. In particular, a duty is enjoined upon the State to see that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Having regard to all these constitutional provisions, it becomes the imperative duty of the judicial officers and much more that of the Commissioners appointed under Workmen's Compensation Act, which is a welfare and beneficial legislation, that the cause of any person suffering from

economic or other disability is not sacrificed on account of technical or such other procedural defects.

6. The learned Commissioner is not a Civil Court and is not bound by the provisions of CPC or that of Evidence Act. A Division Bench of the Kerala High Court in the case of Kunchali Rudrani v. Baby, reported in (1979) 1 LLJ 306, has held that the provisions of Evidence Act are not applicable to the proceedings before the Commissioner for Workmen's Compensation. Similar observation is made by D.A. Desai, J. (as he then was) in the case of Amubibi v. Nagri Mills Co. Ltd., reported in 18 GLR 681. Therein it is observed that the provision of Evidence Act should not apply to the proceedings under the Workmen's Compensation Act. As far as the procedure to be adopted by the Commissioner is concerned, specific provision is made in the Act itself (see Sections 23 and 25 which deal with the powers of the Commissioner with regard to administering oath and calling witnesses and prescribing method of recording evidence). As per Rule 41 of the Workmen's Compensation Rules, only some of the provisions contained in Orders V, IX, XIII, XVI, XVII and XVIII are made applicable to the proceedings before the Commissioners for Workmen's Compensation and that too insofar as they may be applicable. It may be noted that Orders VI, VII and VIII of CPC which pertain to "pleadings generally", "plaint" and "written statement" respectively not made applicable to these proceedings. Moreover, the provisos to the Rule which read as follows, be looked at:

"Provided that:

(a) for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adopt them to the matter before him; and

(b) the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions, if he is satisfied that the interests of the parties will not thereby be prejudiced"".

Thus the provision of Rule 41 gives enough discretion to the Commissioner to depart from the provisions of the Civil Procedure Code, some of which have been made applicable to the proceedings before him. Therefore, it is obvious that the Commissioner is not bound to follow the procedure prescribed for trial of cases in civil courts, nor is he bound to restrict rules of evidence. As provided u/s 10-A of the Act, he can even act on information received by him from any source regarding fatal accident and call upon the employer to explain as to under what circumstances death had occurred. He can also ask for the explanation of the employer whether he is or is not liable to deposit the compensation on account of the death. This provision indicates that he can even act suo motu. In our country, where most of the labour population suffers from the curse of illiteracy and poverty and is incapable of entering into legal fight with the employer, it is rather his (Commissioner's) duty to remain alert and vigilant. Wherever

necessary with a view to see that the provisions of the Act are strictly enforced, he must act suo motu. With a view to simplify the procedure, the nature of application to be made and the details to be given in the application for compensation are mentioned in Section 22 of the Act. This provision clearly indicates that the rules of pleadings embodied in the CPC are not to be applied to the proceedings before the Commissioner. It may also be noted that Section 19 of the Act clearly bars the jurisdiction of Civil Courts.

7. From the aforesaid discussion it should be clear that the duties cast upon and functions to be performed by the Commissioner are radically different than that of Civil Judge, Senior Division. The powers and duties of the Commissioner call for vigilant approach. He is required to see that the miseries of injured workmen or the dependents of the deceased workmen are mitigated, and their claims are decided cheaply and expeditiously. He is required to see that the claims of the injured workmen or their dependents are not frustrated on account of technicalities of the provisions of the CPC and that of the Evidence Act. He is not supposed to find faults with the pleadings of the parties.

8. It is his duty, even apart from the constitutional mandate, to be aware of the principles underlying the Workmen's Compensation Act, 1923. It is slated in the statement of objects and reasons that:

"general principle is that compensation should ordinarily be given to workmen who sustain personal injuries in accidents arising out of and in the course of their employment".

It is not open to him to say that the workman has become a victim of an accident arising out of and during the course of employment and that he was an employee either of the two, i.e. of the truck owner or that of the quarry owner, but is not established as to whose employee he was and therefore his claim should be rejected by relying upon the defects in the pleadings. It was his bounded duty to weigh the evidence on record in the light of the underlying principles and object of the Act and keeping in mind the constitutional commands. He ought to have drawn reasonable inference. The learned Commissioner fell into serious error when he construed the application of the workman meticulously and failed to draw the inference on the basis of the material available before him.

9. In the instant case, the workman has categorically stated in his deposition that he was employed by respondent No. 1 the truck owner and that he was being paid wages by him. The workman has further stated that for the last two days before the accident he was working on the truck. In the instant case, the workman was not employed in a factory or farm belonging to one person. The very nature of the work to be performed by the workman forced him to move from one place to another, i.e. from quarry to the place where the stones were taken and again to quarry. When workmen are being employed in such type of employment, there may be some understanding between the owner of the quarry and the truck owner with regard to the payment of wages to be made to

the workmen engaged in lifting stones and filling the same in the truck. It may be that some servant of the quarry owner or that of the truck owner might be making payment. Therefore, the workman is likely to be in doubt as to who is his real employer. But the learned Commissioner ought to have exercised his commonsense. Just as there cannot be a child, either legitimate or illegitimate, without parents, there cannot be an employee without an employer. In the instant case, when the workman deposed on oath that he was employed by respondent No. 1 the truck owner and when there was no contrary evidence led either by the owner of the truck (respondent No. 1) or by the owner of the quarry (respondent No. 3) the inevitable inference to be drawn is that the workman was employed by respondent No. 1 the truck owner. This would have been the position even if one were to apply the strict principles of Evidence Act as well as that of procedure prescribed for conducting the civil suits. Thus the view taken by the Commissioner is palpably wrong and the same cannot be sustained. Hence the finding arrived at by the learned Commissioner to the effect that the workman has not proved as to with whom he was employed is required to be set aside. In the facts and circumstances of the case, it is held that the appellant workman was employed by the owner of the truck, i.e. respondent No. 1. There is no dispute with regard to the fact that the truck was insured with respondent No. 2. Insurance Company and the insurance policy covers the risk under the Workmen's Compensation Act also. Therefore, both the respondent Nos. 1 and 2 are held liable to pay compensation to the appellant-workman.

10. It is established on evidence of the case that the workman received injury on account of an accident which arose out of and during the course of employment. Injury is listed in the Schedule to the Act. The workman has lost two phalanges of his left hand index finger and the injury has resulted into permanent partial disability. Therefore, as per Item No. 28 of Schedule I of the Act, the workman will be entitled to claim compensation on this basis of 11% loss of his earning capacity. It is established on record of the case that the workman was getting Rs. 10/- per day as wages. Thus, his case would fall in the slab between Rs. 200 to Rs. 300/- on this basis, had there been 100% loss of earning capacity, the workman would have been entitled to claim Rs. 25,000/-. On this basis 11% of Rs. 25,000/- would come to Rs. 2,772/-. Moreover, the workman could not attend to his duties for a period of three months. Therefore, he has claimed Rs. 247.50 as loss of his earnings for the period of three months. Thus, he would be entitled to claim Rs. 3,019.50 as compensation.

11. The appellant-workman has prayed that there was no justification for the respondents for causing delay in making payment of the compensation. The plea advanced by the appellant-workman appears to be quite just and proper. Both the truck owner as well as the owner of the quarry took up highly technical and unsustainable pleas. Both of them went to the extent of disowning the workman and stated that he was not employed by either of them. None of them showed willingness to deposit any amount with the Commissioner even under protest. In the facts and circumstances of the case and in view of such dishonest stand

taken by respondent No. 1, he should be saddled with the maximum penalty (50%) provided under the Act. However, in view of the reasonable stand taken by the counsel for the Insurance Company-respondent No. 2 in this appeal, there is reason to take a lenient view. Hence penalty of 35% of the total amount of compensation is considered reasonable.

12. In the result, the appeal is allowed. The judgment and order dated December 15, 1984 passed by the learned Commissioner for Workmen's Compensation, Bharuch, in Application No. 3 of 1984 is reversed and set aside. Respondent Nos. 1 and 2 are held liable to pay compensation of Rs. 3,019.50 to the appellant-workman together with 6% interest calculated from the date of application till the date of payment. It is also directed that in addition to the aforesaid amount, respondent Nos. 1 and 2 shall pay a penalty of 35% on the total amount of compensation, that is to say 35% of the total amount of compensation together with interest. Respondent Nos. 1 and 2 are further directed to deposit the aforesaid amount with the Commissioner for Workmen's Compensation, Bharuch, on or before April 30, 1986. Since penalty is imposed on the respondents, there shall be no order as to costs. Appeal is allowed accordingly.