(1946) 02 PAT CK 0016

In the Patna High Court

Chitru Tanti APPELLANT

Vs

Tata Iron and Steel Co. Ltd. RESPONDENT

Date of Decision : 18-02-1946

Acts Referred:

Payment of Wages Act, 1936 — Section 2(6)
Workmens Compensation Act, 1923 — Section 2(1)(m)

Citation : AIR 1946 Patna 437

Hon'ble Judges : Fazl Ali, C.J;Ray, J

Bench : Full Bench

Judgement

Fazl Ali, C.J.—The principal point to be decided in these two appeals is whether the expression "wages" as used in the Workmen''s Compensation Act includes such profit sharing bonus as is granted by the Tata Iron and Steel Co. Ltd., to their empolyees under a scheme introduced by the Company some time ago. The details of the scheme are set out in two notices which are issued by the Genera Manager of the Company to the employees of the Company on 27th May and 31st May 1937 respectively. The first notice, after stating that the Directors of the Company have decided to introduce a regular profit sharing scheme in the interests of the employees so that in good years the employees will be receiving a share of the profits on a definite scale, proceeds to describe the manner in which the profit sharing bonus is to be computed. The notice of 31st May 1937 states among other things that:

those employees will be entitled to the profit sharing bonus who have been in the continuous employment of the Company throughout the company''s official year to which it applies and that if the employee''s service has terminated between the end of the year and the first payment date, he (or in the ease of a deceased employee, the person or persons entitled to it) may claim payment of the full bonus amount on that date.

2. I will now briefly narrate the facts with which we are concerned in the two appeals. Miscellaneous Appeal No. 194 has been preferred by the Company

against one Kanhai Zaria Ganera and is directed against the decision of Mr. Barr, a Commissioner under the Workmen''s Compensation Act holding that the profit sharing bonus should be included in the assessment as part of the wages for the purpose of determining the compensation payable to the workman concerned. It appears that the respondent while in the employment of the Company injured his right elbow in July 1942. The injury was at first diagnosed as a sprain, but it was subsequently found that the elbow had been slightly fractured and the workman had been permanently disabled below the elbow. The commissioner has assessed the loss of the earning capacity of this workman at ten per cent and this finding having been accepted before us the only question which we have been asked to determine is whether the Commissioner is right in holding that in assessing compensation the profit sharing bonus should be taken into consideration. In Misc. Appeal No. 362 the appellant is the husband of a deceased female workman named Nagi Tanti. This workman received certain injuries in an accident arising out of and in the course of her employment on 20th June 1942 and died as a result of those injuries. She used to receive wages at the rate of seven annas six pies per day together with a dearness allowance of Rs. 4 per month and also an emergency bonus of Rs. 5 per mensem. Under the profits sharing scheme, to which reference has been made, she was entitled to a profit sharing bonus of three months wages per year of service. The appellant claimed compensation as a dependent of Nagi Tanti deceased and prayed that the profit sharing bonus should be included in the assessment of the compensation. This claim was resisted by the Company and the objection of the Company has been upheld by the learned Commissioner. Thus it appears that in one, of the cases the learned commissioner has held that the term "wages" includes profit sharing bonus and in the other case he has held that it does not. The question to be decided is, which of the two views is correct. Section 2, Clause (1), Sub-clause (m), Workmen''s Compensation Act, runs as follows:

''Wages'' includes any privilege or benefit which is capable of being estimated in money other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

3. In his order under appeal in Misc. Appeal No. 362 of 1943, the learned Commissioner has referred to the definition of wages in Section 2, Clause (6), Payment of Wages Act, but with this definition we are not concerned in the two appeals before us. The whole question is whether the expression "wages" as used in Section 2, Clause (1), Sub-clause (m) includes profit sharing bonus. This clause mentions certain exceptions which are expressly excluded from the definition of wages. The profit sharing bonus does not come within the exceptions. It is certainly a privilege or benefit capable of being estimated in money and is therefore apparently covered by the definition of wages as given in Sub-clause (m) of Section 2. But it is contended that the basic idea underlying the expression "wages" is that it must be something payable under a contract of

service and in lieu of the work done by a particular workman and therefore it cannot include something which is payable at the will and discretion of the employer independently of the contract of service and which is conditional upon the happening of certain events which may or may not happen every year (e.g. the prosperous working of the Company).

4. It is pointed out on behalf of the Company that the profit sharing bonus by its nature may or may not be payable in a particular year and it is said that such a payment which is uncertain could not have been intended to cover the expression "wages" as given in the Act. In my opinion the contention put forward on behalf of the Company is not sound. Whatever may be the strict and literal meaning of the expression "wages," the Act expressly says that the expression "wages" shall include any privilege or benefit enjoyed by a workman which is capable of being estimated in money. There can be no doubt that the receiving of bonus is a benefit enjoyed by a workman. In my opinion there, fore to hold that the expression "wages" as defined in the Act was not intended to include the profit sharing bonus will be to unduly restrict the meaning given to the expression in the Act.

5. The view which I have expressed is supported by the decision of the Court of Appeal in England in Skalies v. Blue Anchor Line (1911) 1 K.B. 360. In that case claim for compensation was made by the widow of the purser of a ship which was lost with all hands. The purser in addition to the regular wages, at the end of each voyage, whenever everything was reported to be satisfactory, received at a fixed rate per month a bonus or extra wages. He also made some profit by the sale on board ship of whisky in nips. The question was as to whether the bonus and the profits made by the purser on the sale of whisky was included within the term remuneration which occurs in Section 13, Workmen''s Compensation Act, 1906 which was then in force in England. It was held by the Court of Appeal that it did and dealing with the argument that the bonus could not be included in the term "remuneration" because it was a conditional payment, Cozens Hardy, M.R. observed as follows:

But then it is urged that this was only a conditional payment, and that a sum which may or may not become payable ought not to be considered in ascertaining the amount of remuneration. I am unable to follow this. Nothing is more common than that remuneration should vary according as the gross takings or the net profits of a business do or do not exceed a certain figure.

6. Farewell, L.J. was also of the same opinion and dealt with the point as follows:

Treating "remuneration" then as synonymous with earnings, I cannot doubt that the so-called bonus must be taken into account, I agree with the Master of the Rolls that reading the letter to Captain. Ilbery of October 16, 1906, which imposed on him a duty to be performed by him at once, and coupling that with, the fact that the deceased was in fact paid extra wages, that the documents put in show that the employers acknowledged that he was "entitled" to these sums, as "extra wages" and that he gave receipts for the same the inference is irresistible that these payments were part of his wages and must be taken into account accordingly, and that there is ample evidence of contract. Even apart from the letter, and if there were nothing but the note acknowledging the liability and the receipt, I am of opinion that there would be ample evidence. I know of no way in which a man can be "entitled to extra wages" except by contract, and I feel no difficulty in the use of the word "conditional". Agreed additional remuneration contingent on a quick passage, or on a dividend exceeding 5 per cent would clearly fall within the word "remuneration" in the Act, although the quickness or the increased dividend depended on luck and were independent of the employee''s own conduct.

7. In the two cases before us although it must be conceded that the granting of bonus was not part of the original contract of employment, yet the words used in the notices to which reference has been made, are clear and leave no doubt that what was intended was that the workmen should deem themselves to be entitled to the profit sharing bonus promised in them in those cases where the profit of the Company exceeds a certain level. I have already quoted an extract from the second notice which states that those employees will be entitled to the profit sharing bonus who have been in continuous service of the Company throughout the Company''s official year. The same notice states that though the service has terminated between the end of the year and the first payment date, the employee or his dependent, as the case may be, will be entitled to the payment of the full bonus. As Farewell, L.J. says, the use of the word "entitled" is sufficient to show that the payment of the bonus was made part of the contract of service. I have therefore no doubt in my mind that in the assessment of compensation "profit sharing bonus" should be included as part of the wages.

8. The only other contention put forward on behalf of the Company is that the claim made in these appeals must fail because in both the cases the bonus became payable after the date of the accident on account of which compensation is claimed against the Company. As I have already stated in one of the cases the accident took place in June 1942 and in another in July 1942. The bonus for the year was, however, declared after July 1942. According to Schedule IV the compensation is to be calculated on monthly wages and Section 5 of the Act gives the method of calculating the monthly wages and states among other things that:

Where the workman has, during a continuous period of not less than 12 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.

9. The words which occur in this provision are--"total wages which have fallen due for payment" to the workman in the last 12 months of that period. It is contended on behalf of the Company that the bonus was not due until it was

declared and inasmuch as the bonus was declared in 1942 after the date of the accident therefore it could not be taken into account for the purpose of assessing compensation. At first sight the argument appears to be plausible but in dealing with it we must take into consideration the profit sharing scheme under which the bonus is granted.

10. According to that scheme whenever a bonus might be declared, a workman becomes entitled to it if he has been in continuous employment of the company throughout the company''s official year. It was not disputed that the official year of the Company in these cases ended on 31st March 1942. The second notice makes it clear that even if the employee''s service has terminated before the first payment date, he will be entitled to claim payment of the bonus if he has been in continuous employment of the Company throughout the official year. Both the workmen with whom we are concerned were in the continuous employment throughout the official year and therefore they earned their bonus at the time of the accident.

11. In these circumstances the objection raised on behalf of the Company must fail.

12. I would, therefore, allow Misc. Appeal No. 362 with costs and dismiss Misc. Appeal No. 194 with costs and direct that in both these cases the profit sharing bonus earned by the workmen concerned should be taken into account in assessing the compensation payable under the Act.

Ray, J.

I agree.