
(2000) 07 BOM CK 0088
In the Bombay High Court
Case No : First Appeal No. 197 of 1990

Damu Sonawane and Another	Vs	APPELLANT
Sayyed Yousuf Sayyad Jalaluddin and Another		RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2001) 3 ALLMR 35 : (2000) 87 FLR 305 : (2001) 3 LLJ 714

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Judgement

R.J. Kochar, J.—The old parents, father and mother of the deceased son, are aggrieved by the impugned judgment and order dated April 24, 1990, dismissing their application, numbered as Application (WC No. 1/1988), claiming compensation under the Workmen's Compensation Act, 1923, from the employer respondent No. 1, of the deceased, and the Insurance Company, the respondent No. 2, for the accidental death, which occurred during the course of and arising from the employment of the deceased, who was employed by the respondent No. 1 as a cleaner, who was physically working on the truck owned by respondent no. 1 and, who died in the accident, which took place on May 5, 1987 on the way from Ahmednagar to Bombay, at Khopoli. The parents have claimed an amount of Rs. 44,800/- towards compensation and other consequential reliefs provided under the Act, such as penalty and interest on the amount of compensation. The parents have further averred that their deceased son was drawing a sum of Rs. 500/- per month, as his wages, from the respondent No. 1. They have further averred the age of their deceased son 20 years at the time of his death. Before filing the claim application, they had issued a notice to the respondents claiming compensation for the death of their son which took place in the accident, in the course of and arising from his employment. There was no reply from the respondents and, therefore, the present application was filed by them. The respondent No. 1 employer filed his written statement, admitting the factum of employment of the deceased with him for a monthly wage of Rs. 500/-. He

farther admitted the fact of accidental death of the deceased and also pointed out that the vehicle was fully insured with the respondent No. 2, and, therefore, the entire liability to pay the compensation was on the shoulder of the respondent No. 2, the Insurance Company. He, therefore prayed that, as far as he is concerned, the application should be dismissed. The respondent No. 2, in its written statement, denied the relation between deceased and respondent No. 1, the employer. The respondent No. 2 further denied the fact of payment of wages and also the dependency of the appellant on the deceased. The Insurance Company hence sought dismissal of the application against them too.

2. On the basis of the pleadings, learned Commissioner framed and answered following issues:

ISSUES FINDINGS

1.

Do the applicants prove the deceased Kadu sustained injuries and succumbed to the same in the accident occurred while he was in the employment of Opponent No. 1 ?

Accidental death of Kadu is proved. Rest of the issues does not survive in view of findings recorded for Issue No. 2.

2.

Are applicants entitled to get compensation, if yes, to what amount ?

No.

3. What order ? As per final order."

In effect, it was held by the learned commissioner that the fact of accidental death of the deceased son of the claimants- appellants was proved but he answered in negative the second issue as to whether the appellants were entitled to get compensation.

3. I have heard the learned advocate for the appellants but, I did not have benefit of hearing the advocates for the Respondents. The Respondent No. 1 has absented himself, though served duly by this Court. For the respondent No. 2, however, none has appeared for them. On behalf of the appellant, the father of the deceased had adduced his evidence and affirmed on oath whatever that was stated in his application. He corrected the age of the deceased as 25 years at the time of accident. In paragraph 3 of the evidence he has specifically sworn on oath that both the appellants were dependent on the income of the deceased son. In his cross examination, a question appears to have been put to him which he answered as under:

"It is true he was spending all his earnings on himself. This cross-examination was initiated on behalf of Respondent No. 2 as, in the beginning, the respondent No. 1 had declined to cross examine the witness though, however, subsequently,

he sought permission to cross examine the said witness. To a question, the witness has answered as under: "It is not true that deceased was not giving any amount to us for our maintenance." The respondent No. 1 the owner of the truck, and employer of the deceased, examined himself and admitted that the deceased Kadu was working as a Cleaner of his truck, which met with accident and, at that time, the deceased was in his employment. He further fairly admitted that he had informed the Insurance Company about the accident by notice dated. November 4, 1987. He further stated that the truck was insured with respondent No. 2 and he also produced the insurance policy before the Commissioner. In the cross examination, no substantial material was elicited from the witness."

4. Learned Commissioner, while deciding the application under the Workmen's Compensation Act, 1923, appears to have totally lost sight of the fact that it was a piece of social and beneficial legislation, enacted in the year 1923, with the avowed object of getting compensation to those who met with accident and sustained partial or total disability and to those who were dependent on the deceased for their livelihood. Intention of the legislature was not to leave the concerned persons helpless and in lurch, in the course of their life, and also not to make the dependents destitute for their source of their livelihood having been vanished in the death of the bread earner for them. Learned Commissioner has taken a pedantic and technical approach in the matter. He has clung to the straw of pleadings in such cases. He sought to search for a plea in the application that the parents ought to have specifically pleaded that they were partially or wholly dependent on their deceased son. I fail to understand if the parents do not depend on their son for their livelihood, on whom they would naturally depend. According to me, it is to be presumed that the parents do depend on their son for their livelihood. In joint family which we have, there is total interdependence of each other and the whole income is pooled together on which all depend, old and young, employed and unemployed, and those who are earning and those who are not earning. The learned Commissioner, perhaps, forgot this traditional concept of our joint family wherein it is the pious duty and obligation of every son to support his old parents till they live. Ordinarily, all such obligations and duties are discharged by the sons of their old parents, whether they live together or not. According to me, a son is yet to be born who would totally and absolutely neglect his old parents. Howsoever bad he might be, he would never like his parents to be destitute, during their lifetime. I may hasten to add that there might be some unfortunate exceptions to what I have said.

5. In the proceedings under the present beneficial legislation, the technical rules of pleadings are to be ignored. The application was filed by the old parents who were living in a remote village and who were and who are illiterate. The law of pleadings cannot be applied strictly in such matters. The applicants have broadly stated in the application the facts which gave them cause for filing the said application. If the learned Commissioner wanted to follow strictly the provisions of the Civil Procedure Code, in that case, it was his bounden duty to frame

specifically an issue regarding the dependency of the appellants on the deceased son. Had he framed that issue, in that case the appellants would have got an opportunity to state, in details, the matter of dependency and they would have given all the particulars about their dependency on their deceased son. Since no such specific issue was framed by the learned Commissioner, he ought not to have attached great importance to a stray sentence elicited from the old man in the witness box, that the deceased was spending all his earnings on himself. We do not know what type of question was framed and under what circumstances the exact answer was recorded. In the examination-in-chief, on oath, he has specifically stated that both of them were dependent on the income of the deceased. In the cross-examination also, he has denied that the deceased was not giving anything for their maintenance. We have to construe all the facts and circumstances together and read the evidence in the light of the provisions of beneficial legislation. This is where the Commissioner has committed a grave error while deciding the present application.

6. I cannot commend the approach of the learned Commissioner. He has adopted an extremely pedantic, technical and narrow approach to the present case. He began with a search for pleading and ended with a stray answer given by the old parent. If the Commissioner was serious about the question of dependency then he ought to have specifically framed an issue and called upon the parties to lead the evidence on that issue. He did not do so. He, however, rejected the claim application on the answer given by the witness that the deceased was spending entire earnings on himself. He did not consider the case made out by the witness in examination-in-chief that both the parents were dependent on their deceased son and that there is clear denial by him, in the cross-examination, that the deceased was not sending money for their maintenance. Had the Commissioner considered all these facts together, the conclusion would have been inescapable that the appellants were the dependents on the earnings of their son. The findings of the learned Commissioner are, therefore, erroneous and perverse and deserve to be quashed and set aside.

7. Shri C.K. Shinde, the learned advocate for the appellant has relied upon a decision of House of Lords on the question of dependency. The House of Lords have decided this question as back as in the year 1900. I would like to quote the following paragraph from the said judgment *Main Colliery Company v. Davies*, which is reported at 1900 AC 358 :

"Now, what is dependency? The notion that a person has a legal obligation upon him to keep his whole family when he earns a considerable part of what is required himself, and when the other members of the family only contribute a small part, appears to me to account for the Legislature having introduced not only dependency, but partial dependency. Was there or was there not partial dependency in this case - that is to say, was there evidence upon which the country Court judge might have come to the conclusion that there was? For my own part I cannot in the least doubt that there was. The whole family were all

dependent upon the wages. Whose wages? Partly this boy's wages. It is said that this boy was under no obligation to support his brothers and sisters. No one denies that; but it appears to be forgotten that the obligation is upon the head of the family. He is by law bound to support his family, and he would be punished by law if he did not support them. Therefore, the burden being upon the father of the family, the father of the family in his turn obtains from the wages of those who are being maintained by him a partial contribution to the general family fund. Why is not the father in the discharge of that burden partly dependent upon the earnings which he receives from his children? I am not able to answer that question, It appears to me that he must be relying or dependent call it what you please - for the means by which he discharges his legal obligation upon the funds supplied to him, or partly supplied to him, by the children who earn those funds."

The learned Judges have further observed the approach of the Courts in such matters in following terms:

".... These extremely refined notions as applicable to the administration of this Act, creating some hypothetical standard within which the judge is obliged to act, would not to my mind be likely to conduce to the clear administration of the law. At all events, in this case it is enough to say that I think there was evidence which justified the country Court judge in the conclusion at which he arrived, and I move your Lordships that this appeal be dismissed with costs."

The message given by the House of the Lords to all the Courts, who are called upon to administer justice, in such cases is that of liberal approach and not to cling to the refined notions of civil law.

8. Shri Shinde has also relied upon a Judgment of one of our High Courts i. e. the High Court of Madhya Pradesh in case of Ramji and Another Vs. Lalit Kumar Bardiya and Others, . The learned single Judge Shri D.M. Dharmadhikari, as he then was, on the point of dependency, has observed as under Ramji and Another Vs. Lalit Kumar Bardiya and Others, :

"8. In my considered opinion to fulfil the avowed object of the Act, which is a beneficial legislation, the parents, who did not get any advantage from the earnings of the deceased but were entitled to receive the same in normal circumstances, are included in the relevant definition clause of the word "dependent". Non-payment of wages due to the deceased deprived the parents of the benefit of the earnings of the deceased who was living jointly with them during his lifetime. His death deprived them of his monetary support for all times in future. Such parents should be held intended to be included in the definition of dependents under the sub-clause mentioned above. Any other interpretation would have wrought great injustice on the parents who were deprived by the employer of the benefit of the earnings of the deceased workman, who was not paid his dues towards wages in his lifetime, in comparison with such parents who actually received such benefit."

9. In the aforesaid circumstances, I quash and set aside the impugned judgment and order dated April 24, 1990 and I hold that the appellants were the dependents on the earnings of their deceased son and, therefore, they are entitled to compensation under the provisions of the Act. The application, therefore, is allowed. The respondent jointly and severally, are liable to pay the entire amount of compensation, including the amount of penalty, to the extent of 50 per cent of the amount of compensation with interest at the rate of 9 per cent throughout. It is however, made clear that the respondent No. 2 Insurance Company will not be liable to pay the amount of penalty and interest. It will be the liability of Respondent No. 1 to pay the amount of penalty and interest on the amount of compensation which is claimed by the appellants to the tune of Rs. 44,800/-. The appeal is allowed. Since I have imposed penalty and awarded interest, there will no order as to cost.

10. Certified copy is expedited. Respondent No. 2 is directed to deposit entire amount of compensation within two weeks from receipt of the order of this Court and Respondent No. 1 shall deposit the whole amount within four weeks, failing which both will be liable to pay interest on the entire amount at the rate of 18 per cent per annum.