

(1996) 04 OHC CK 0019
In the Orissa High Court
Case No : M.A. No. 147 of 1993

Dhaneswar Das and Another	Vs	APPELLANT
Commissioner for W.C.-cum-Asst. Labour Commissioner and Others		RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 21

Citation : (1997) ACJ 762 : (1996) 82 CLT 228 : (1998) 3 LLJ 1219

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Kishore Jena, A.K. Mohapatra, D.P. Das and A. Sahoo, for the Appellant; Addl. S.C. For Respondent No. 1, J. Das, S. Das, G.B. Jena and G.B. Jena, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—In this appeal u/s 30C of the Workmen's Compensation Act the parents of the deceased challenge the order dated February 18, 1993 passed by the Assistant Labour Commissioner-cum-Commissioner for Workmen's Compensation under the W.C. Act (in short, "the Act") in W.C. Case No. 169/1988.

2. A brief reference to the facts would suffice. Late Nrusingha Charan Das the son of the present appellants was working under Respondent No. 4 M/s. Larson & Toubro Ltd. As the death Occurred on December 15, 1987 the Respondent No. 4 voluntarily deposited Rs. 42,221.60 before the Commissioner for Workmen's Compensation, Visakhapatnam as per the provisions of the Act for payment of compensation to the legal representatives of the deceased. The Commissioner for Workmen's Compensation, Visakhapatnam., Respondent No. 3 sent the aforesaid deposited amount to the Respondent No. 1, the Commissioner for Workmen's Compensation at Cuttack for disbursement of the said amount in favour of the dependents of the deceased. It is relevant to state here that the

present appellant No. 1 had approached the Commissioner at Visakhapatnam for grant of compensation and therefore while sending the amount under deposit, he also despatched all the documents including the claim application of the appellant No. 1 in Form No. "G" of the Act to the Commissioner, at Cuttack u/s 21(2) of the Act. Before the Commissioner at Cuttack the appellants as well as the Respondent No. 2, the wife of the deceased entered their appearances and contested on the ground of apportionment of the compensation amount Besides the dispute with regard to apportionment, the Respondent No, 2 had filed another application challenging the quantum of compensation and claiming more as per Section 22A of the Act. The Respondent No. 1, the Commissioner at Cuttack issued notice with regard to enhancement of quantum.

3. While the case was pending for consideration for grant of higher compensation the Commissioner without any notice took up the matter and without hearing the parties rejected both the petitions i.e. the objection for apportionment as well as the petition for higher compensation. While rejecting both the applications the Commissioner Respondent No. 1 passed an order for disbursement of compensation amount in favour of Respondent No. 2 Sujata Das only. In the said order the Commissioner observed that he had no jurisdiction for enhancement of compensation as the same had already been determined by the Commissioner at Visakhapatnam. He also formed the opinion that Sujata Das was exclusively entitled for the compensation and the present appellants had no claim over the same.

4. Sri Jena, the learned counsel for the appellants has submitted that the Workmen's Compensation Commissioner at Cuttack has misconstrued the transfer of record by the Commissioner, Visakhapatnam and he has failed to appreciate the import of the language of Section 21 of the Act, It is further submitted by him that the Respondent No. 1 has failed to exercise the jurisdiction vested in him and has committed gross illegality while appreciating the materials on record and therefore, the order passed by him is vitiated in the eye of law.

5. The learned Additional Standing Counsel appearing for the Commissioner supports the order and submits that he has passed the order in accordance with Section 21 of the Act and there is no infirmity in the same. Sri G. B. Jena, learned counsel appearing on behalf of the employer, Respondent No. 4, has submitted that the Company has calculated the entitlement and had suo motu deposited before the Commissioner at Visakha-patnam and their bonafide cannot be questioned. It is vehemently urged by him that as the scope of enhancement is totally absent there is no illegality in the order passed by the Commissioner at Cuttack.

6. Despite sufficiency of notice the Respondent No. 2 has not entered appearance. However, I find from the records of the W. C. Commissioner at Cuttack that half of the amount has already been disbursed in favour of Respondent No. 2 and she has received the same.

7. To appreciate the rival contentions, it is appropriate to refer to the letter issued by the Commissioner, Visakhapatnam. He has mentioned in his correspondences that the Company of Respondent No. 4 has deposited a sum of Rs. 42,221.60 payable to the dependants of the deceased workman and the defendant namely Sujata Das was staying within the jurisdiction of the Commissioner at Cuttack. After narrating the facts he has further indicated in paragraph 2 of the said letter which reads as follows :

".....I, therefore, u/s 21(2) of the Workmen's Compensation Act, 1923 transferred the material papers of the case filed for disposal. The amount of Rs. 42,221.60 which is available with this Court, will be transferred to you by means of a Demand Draft, on receipt of communication from you."

Along with the letter of the Company, the deposit of compensation in Form No. "G", the insurance coverage and the claim petition filed by the appellant No. 1 before him were transmitted to the Commissioner at Cuttack. As the impugned order shows, the Commissioner at Cuttack took into consideration the petition filed by the present appellants who claimed the entire amount in deposit in their favour. They also disposed for payment of the total sum in favour of the wife of the deceased. He rejected both the applications on the ground of lack of jurisdiction. This finding with regard to lack of jurisdiction is a misconception by the Commissioner. To appreciate the jurisdiction on transfer it is essential to make a reference to Section 21 (2) and (3) of the Act which read as follows:

"21. Venue of proceedings and transfer:

(1)x xxx

If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently, dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings.

vided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependents of a lumpsum without giving such party an opportunity of being heard.

vided further that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lumpsum shall be transferred for disposal under this sub-section to a Commissioner in the same State save with the previous sanction of the State Government or to a Commissioner in another State save with the previous sanction of the State

Government of that State, unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him."

8. As envisaged in the aforesaid provisions, it is quite clear that a Commissioner can transfer the matter to another Commissioner either for report or for disposal. As provided under Sub-section (3). if it is for report, the transferee Commissioner shall return the report but if it is transferred for disposal he is required to continue the proceeding as if it had originally commenced before him. The provision being absolutely in ambiguous and clear as day, there is no question of any confusion-arising in its interpretation. In the case in hand, the Commissioner at Visakhapatnam had transferred the case for disposal. All the relevant papers along with the money lying in deposit were transmitted. The correspondences made by the Commissioner at Visakhapatnam is quite apparent that he had not decided the dispute either with regard to apportionment or enhancement. He has only transferred for disposal. Once a matter is transferred, a statutory obligation is cast on the transferee Commissioner to decide it in accordance with law as if it had commenced before him. The Commissioner at Cuttack has not appreciated the aforesaid provisions and definitely he has misconstrued the mandate of Section 21 (2) and (3). His decision with regard to his jurisdiction is unsustainable and cannot stand scrutiny. He should have taken up the matter for disposal with regard to enhancement as well as apportionment. As he has not done so and rejected in limine on erroneous interpretation in regard to jurisdiction, I have no other option than to set aside the impugned order. Under these circumstances, the matter has to be remanded to the Commissioner at Cuttack for disposal in accordance with law. However, the amount which has already been disbursed in favour of Respondent No. 2 need not be deposited before the Commissioner at Cuttack.

9. In the result, the appeal is allowed. The award is set aside and the matter is remanded for fresh disposal in accordance with law as indicated above. The Commissioner-Respondent No. I would do well to dispose of the matter within a period of three months from the date of receipt of this order. However, there shall be no order as to costs.