
(1995) 10 OHC CK 0005
In the Orissa High Court
Case No : Misc. Appeal No. 224 of 1991

Divisional Forest Officer and Others	Vs	APPELLANT
Noniar Bibi and Others		RESPONDENT

Date of Decision : 17-10-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (1997) ACJ 271 : (1996) 81 CLT 283 : (1996) 1 OLR 183

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; Kishore Jena, A.K. Mohapatra and S. Samal for Respondents 1 to 3 and P.K. Tripathy for respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—On a reference being made by learned Single Judge, this matter was placed before a Division Bench to adjudicate the question whether Forest Guard in the Wild Life Conservation Division of State Government is a "workman" under the provisions of Workmen's Compensation Act, 1923"(in short, the "Act").

2. A brief reference to the factual aspect is necessary before we take up the question referred for adjudication. One Sk. Noor Mohammad was working as a Forest Guard under the Forest Range Officer, Kujang. While he was on patrolling duty in the forest of Nookitola he was killed by certain poachers. Claim was lodged by his legal representatives under the Act claiming compensation on the premises that deceased who was a workman was aged about 42 years at the time of death, and was drawing a sum of Rs. 1106/- per month as his salary, and was entitled to compensation of Rs. 1,00,000/-. The Divisional Forest Officer, Wild-life Conservation Division, Chandbali, Forest Range Officer, Kujang and Chief Wild-life Warden were impleaded as opposite parties. The only dispute raised related to wage and salary of the deceased in the written statement filed by Divisional Forest Officer. It was stated that on the basis of decision of

Government, claimants were entitled to ex gratia payment of Rs. 50,000/-along with family pension and facility of employment to one of his legal representatives.

3. The Commissioner for Workmen's Compensation-cum-Asst. Labour Commissioner, Cuttack (in short, the "Commissioner") held that claimants were entitled to Rs. 60,746.81. In view of admission of the opp. parties before him to the liability for Rs. 50,000/- he directed that additional amount of Rs. 10,746.81 was to be paid. Reference was made to the Notification of Government in Forest, Fisheries and A. H. Department vide Notification No. 5291/FFAH/2F(M)/2/86/85 dated 28-2-1986. whereby liability to the extent of Rs. 50,000/- was admitted.

4. In this appeal u/s 30 of the Act, stand of the appellants is that deceased was not a workman and in any event adequate compensation having been provided in terms of notification referred to above, additional amount directed to be paid is without any basis. Learned counsel for claimants submitted that no dispute was raised before the Commissioner that the deceased was not a workman. On the contrary, it was accepted that deceased was a workman but prayer was to restrict benefit in terms of the notification.

5. Section 2(1)(n) which defines, who a workman is, reads as follows :

"2. Definitions.-(1) In this Act, unless there is anything repugnant in the subject of context-

xx xx xx (n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is :

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or Sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II.

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union) and any reference to a workman who has been injured shall, where the workman is dead includes a reference to his dependants or any of them."

Schedule-II as referred to in Section 2(1)(n) deals with any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business who Is employed in any such capacity as is specified therein. To come within the definition of workman as defined in Section 2(1)(n) of the Act, it has to be ascertained whether the case is covered by any of the categories stated in that sub-section. The provision excludes certain persons relating to nature of employment. These

are whose employment is of casual nature, or who is employed otherwise than for the purposes of trade or business. Case of the claimants revolves round Clauses (xxii) and (xxiii) of Schedule II. They read as follows :

"LIST OF PERSONS WHO SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n) ARE INCLUDED IN THE DEFINITIONS OF WORKMAN

The following persons are workmen within the meaning of Section 2(1)(n) and subject to the provisions of that section. that is to say any person who is --

xx xx xx xx (xxii) employed in the training, keeping or working of elephants or wild animals; or

(xxiii) employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; or "

It cannot be laid down as a rule of universal application that a Forest Guard is a workman generally. If he is engaged in any of the activities enumerated in Clause (xxii) or (xxiii), certainly he is a workman. Section 2(1)(n) of the Act taken along with Schedule II, item (xxii) makes it clear that persons employed in the training, keeping or working of elephants or wild animals are workmen within the meaning of Section 2(1)(n) of the Act. Additionally, item (xxiii) inter alia deals with felling or logging of trees, or the transport of timber by inland water or the control or extinguishing of forest fires. Duty of a forest guard primarily is to see that forest is properly preserved. The Commissioner with reference to materials on record has recorded the following finding :

".....Under Schedule II of the W. C. Act a person employed in the training, keeping or working of elephant or wild animals, is a workman. The meaning of keeping also includes preservation of wild animals. The forest guards sometimes do the work of extinguishing of forest fire and watch the felling logging of trees and transport of timbers etc."

There was also no dispute raised by the authorities before the Commissioner that deceased was not a workman. In view of the finding of facts recorded by the Commissioner, there is no scope for interfering in an appeal u/s 30 of the Act. Section 30 of the Act authorises the High Court to entertain an appeal only if a substantial question of law is involved in the case. The words "substantial question of law" have not been defined anywhere in the statute and yet they have acquired a definite connotation. There is no scope of interference by the High Court on a finding recorded which could be treated to be a finding of fact. We do not entertain this appeal because conclusions are essentially factual and are not perverse, unreasonable and does not involve any substantial question of law to warrant entertaining the appeal u/s 30 of the Act. It is somewhat too manifest that the finding recorded by the Commissioner was one of the pure fact raising no question of law far from there being any substantial question of law therein as is the mandatory requirement of the proviso to Section 30(1) of the

Act.

The appeal fails and is accordingly dismissed.

P.C. Naik, J.

6. The contention of the learned counsel for the Stats that a person who is a Government employee end covered by family pension, General Provident Fund and Family Benefits Scheme of the State Government, cannot be deemed to be a workman within the meaning of Section 2(1)(n) of the Workmen's Compensation Act, 1923 cannot be accepted. Whether a person is, or is not a workman will depend on whether or not, he comes within the scope of the definition of "workman" contained in Section 2(1)(n) of the Act. However, I agree with Brother Pasayat, J. that on the facts and circumstances of this case, the finding of the learned Commissioner that the deceased Forest Guard was a "workman", cannot be interfered with in this appeal although I have reservations whether a Forest Guard can be said to be a person "employed in the training, keeping or working of elephants or wild animals" or "employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires". I agree that the appeal needs to be dismissed.