

(1978) 05 RAJ CK 0001
In the Rajasthan High Court
Case No : CivWrit Petition No. 225 of 1978

Executive Engineer, R.C.P.

APPELLANT

Vs

Smt. Rukman

RESPONDENT

Date of Decision : 05-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Workmens (Costs and Fees) Rules, 1959 — Rule 3
Workmens Compensation Act, 1923 — Section 30

Citation : (1979) ACJ 73 : (1978) RLW 264

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : K.C. Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

Lodha, J.—As these two writ petitions contain identical facts, they are disposed of by this single judgment.

2. On 29.4.1976 at about 2.30 p.m, two workmen Mangilal and Tejaram of village Ratkara Teh. Bilara Dist, Jodhpur who were working on the bank of Rajasthan Canal, fell down in the canal and lost their precious lives. The unfortunate legal representatives gave notice and then, since the State authorities did not pay compensation, an application was filed before the Workmen's Compensation Commissioner. The application was contested by the Petitioners. The Commissioner granted compensation to the legal representatives of both of them to the extent of Rs. 13,500/-. Costs were also awarded and the advocate's fee was assumed at Rs. 630/-, presumeably as per the civil Court rules.

3. The State obtained opinion of their advocate who opined that the case is not fit for appeal u/s 30 of the Workmen's Compensation Act.

4. It is ingenuity of the State's law officers that it resulted in filing of the writ

petition under Article 226 of the Constitution when they were advised by the advocate earlier that even the case is not worth filing appeal and in fact no appeal was filed. Mr. Bhandari, Deputy Government Advocate realising the difficulty and the anomolous situation in which he was placed by filing of this writ petition submitted that he would like to press the writ petition against the award of costs only. Being conscious of the fact that Article 226 Clause (3) of the Constitution is a complete bar to the entertainment of such writ application, he could not press it further and conceded that since the appeal has not been filed, though provided u/s 30 of the Act, the writ application cannot be maintained.

5. I have to mention that with the intention of making a grievance against the award of costs by the Workmen's Compensation Commissioner, to the poor legal representatives of the unfortunate workmen who lost their lives in the Rajasthan Canal, the State has incurred the cost of filing this writ application unnecessarily which at least could have been avoided.

6. The sole contention of the State is that Rule (3) of the Rajasthan Workmen's (Costs and Fees) Rules, 1959 provides for payment of Rs. 10/- only which can be reduced to Rs. 5/- increased to Rs. 50/- as the maximum fee in the cases arising under the provisions of Workmen's Compensation Act. The provision putting of a ceiling of Rs. 50/- as counsel fee requires consideration for revision by those who can do it. It means that a workman cannot avail of services of a good lawyer at all because it will be impossible to have a counsel for Rs. 10/- only and even for Rs. 50/-. The labour legislations like Workmen's Compensation Act, Minimum Wages Act, Payment of Wages Act, Factories Act etc. all have been enacted for the socio-economic purpose of providing relief to the workmen and regulating their relations with their masters in the performance or desire. The compensations which are allowed to the workmen also are fairly low in comparison to the compensation which are allowed by the Railways and Airlines in case of other accidents which is Rs. 50,000/- and Rs. 1 lac respectively. The human life is the same whether one dies while functioning as a workman in a factory or while travelling in aeroplane or train. However, it is not my domain to make any comment over it because it is exclusively for the Legislature to legislate.

7. But when counsel's fee is allowed advalorem at a particular scale both in civil Courts and High Court which sometimes runs into thousands and usually in hundreds, is it not a sad state of affairs that a workman or his legal representatives are not allowed reimbursement of the fact which they pay except Rs. 10/- or maximum Rs. 50/-. Though this again is the domain of the Legislature of the rule-making authority which is the Government, I do feel that since the State had filed this writ application, it must take a note of this anomalous position also and if so advised, do the needful to put the lawyer's fees or costs in workmen compensation cases at par with the civil courts and other courts. If the main intention was to provide protection to workmen from charging of higher fees by counsel of the employers, the rule making authority is

fully authorised to keep that in view and ensure that also.

8. As already mentioned above, the writ application is liable to be dismissed on the short point that appeal lies u/s 30 of the Workmen's Compensation Act and was not filed in this case. Even if it would have been done, the jurisdiction under Article 226 should not be invoked in matter of this nature where all that has been done is to allow costs to the deceased workmen's legal representatives as per the civil court rules although it may not be in accordance with the Workmen's Compensation (Costs and fees) Rules as discussed above. Article 226 of the Constitution further requires that the Petitioner should show that substantial injury would be caused if the impugned order is not set aside and I fail to appreciate the nature of such substantial injury in this particular case at least.

9. With the above observations, the writ petitions are rejected summarily. Let a copy of this order be sent to the State Government.