

(1941) 10 PAT CK 0006

In the Patna High Court

G. Powell and A. Ghany Co. and Another

APPELLANT

Vs

Panchu Makadam and Others

RESPONDENT

Date of Decision : 28-10-1941

Acts Referred:

Workmens Compensation Act, 1923 — Section 19, 20, 21

Citation : AIR 1942 Patna 453

Hon'ble Judges : Harries, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C.J.—This is an appeal by the employers from an order of a Commissioner under the Workmen's Compensation Act, 1923, awarding a sum of Rs. 458 as compensation to the respondents who are the dependants of a deceased workman said to have been fatally injured whilst following his employment under the appellants.

2. From the order under appeal it would appear that the facts of the case are as follows: The deceased Sukhdeo Eol was a workman employed by the respondents in their stone quarry at Manpur Hill, Gaya. On 1st December 1939 shot-firing was to take place and 5 holes had been bored and charged with country gunpowder for blasting. The deceased Sukhdeo Kol with others had been removed outside the danger zone before the shots were fired. Four shots were fired when Sukhdeo Kol and others ran towards the quarry. The manager of the quarry, who was present, and others shouted to these men as the fifth shot had not then been fired. That shot was fired and a piece of flying stone hit Sukhdeo Kol on the head causing such serious injuries as to cause his death shortly afterwards.

3. Proceedings were brought by the dependants of the deceased workman claiming a sum of Rs. 900 as compensation. It was admitted that Rs. 92 had been already given as a compassionate allowance to these dependants, and eventually the Court came to the conclusion that a sum of Rs. 458 was due from the employers to the workman's dependants because the accident was one which

had arisen out of and in the course of the workman's employment.

4. It appears to me that this order cannot possibly be sustained as there had been no real hearing of this application for compensation by the Commissioner. What appears to have happened is that the Commissioner by an order dated 8th June 1940 directed one Mr. B.D. Pande to make a local investigation and to report by 21st June 1940. The finding of the Mines Inspector was also called for. Mr. Pande appears to have conducted some kind of investigation and submitted his report.

5. There is also on the record statements of two witnesses, namely, Maksud Khan the manager of the quarry and Panchoo Kol, who is the father of the deceased man and the applicant. The statement of the manager is dated 2nd December 1939 and must have been taken before these proceedings were commenced. In fact, this statement must have been taken within a few days of the accident. There is nothing on the record to show when the statement of the applicant Panchoo Kol was taken; but it does not appear to be a deposition and neither of the statements was made on oath.

6. It would appear that the Commissioner decided this case upon these two statements, and the report of Mr. Pande together with the report of the Mines Inspector. In my view there has been no hearing of this application in the judicial sense. Section 19, Workmen's Compensation Act, 1923, constitutes the Court which is to hear applications made under the Act. The section is in these terms:

(1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

7. Section 20 of the Act deals with the appointment of Commissioners and Section 21 with the venue of proceedings and transfer of proceedings and such like. Section 23 of the Act deals with the powers of and procedure to be followed before Commissioner appointed under the Act. That section reads as follows:

The Commissioner shall have all the powers of a civil Court under the C.P. Code, 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a civil Court for all the purposes of Section 195 and of Chap. 35, Criminal P.C., 1898.

8. Section 24 deals with the appearance of parties before the Commissioners and this section permits legal practitioners to appear and act for the parties and also

permits officials of an insurance company or a registered trade union so to do. Section 25 of the Act deals with the method of recording evidence, and this section is most important and is in these terms:

The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record.

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

9. These sections make it clear that the Commissioner must hear evidence adduced by the parties and decide the dispute whatever it may be upon such evidence. In the present case the Commissioner heard no evidence at all. As far as one can see from the record, he appears to have entirely overlooked the mandatory provisions of Section 25. There is nothing on the record to suggest that evidence on oath was taken by any one, much less the Commissioner and that being so, there were no materials of any kind before the Commissioner upon which he could legally decide the case. The Act enjoins that he and he alone can decide these matters, and there is nothing in the Act which entitles him to delegate his powers and to order one of his subordinates to do the work for him or to make reports so as to make his work lighter and easier. He is constituted the tribunal to hear and determine these cases in the manner provided by the Act, and he is bound to do so and to follow the terms of the Act. The case before us appears to have been tried without any attempt being made to comply with the mandatory provisions of the Act under which the Commissioner was appointed. That being so, this case must go back and be re-heard and determined in accordance with law.

10. As the case will have to be re-heard, there is one matter to which I would like to draw the Commissioner's attention. He appears to have thought that because this accident occurred during the period of the deceased workman's employment it must have arisen out of and in the course of such employment. It by no means follows that, because a man is injured during the time of his employment the accident arose out of or in the course of such employment. The defence in the present case appears to be that the deceased was injured whilst doing a prohibited act or an act which was so highly dangerous that it cannot be said to have formed part of his employment. It will be for the learned Commissioner to consider these matters and to decide upon evidence whether there was a genuine prohibition or not. He should also inquire as to whether or not a statutory prohibition exists, because if there is such a prohibition it is a

matter which will require serious attention. I am merely pointing out these matters so that they can be considered before arriving at a finding as to whether the accident arose out of and in the course of employment. If the accident did not so arise, then the applicants are not entitled to compensation unfortunate as this accident might have been. In the result, therefore, I would allow this appeal, set aside the order of the Commissioner and send back the case to him to be re-heard and determined in the light of the observations which I have made in this judgment and in accordance with law. Both parties should be given an opportunity to adduce such evidence before the Commissioner as they may deem proper. The costs of these proceedings and the previous proceedings in the Court below will abide the event.

Manohar Lall, J.

I agree.