
(2006) 04 MP CK 0007
In the Madhya Pradesh High Court

Harinarayan

APPELLANT

Vs

Prem Narayan and Another

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Employees Compensation Act, 1923 — Section 10, 30

Citation : (2006) 110 FLR 180

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal, filed by the claimant u/s 30 of the Workmen's Compensation Act, against an order dated 1.3.2002, passed by learned Commissioner for Workmen's Compensation, Dewas in W.C. (N.F.) Case No. 8 of 1999. Facts are these:

Appellant is claimant. He was a driver and was in the employment of respondent No. 1 (non-applicant No. 1). On 5.11.1998 while he was driving the vehicle (MP 04-E 0848), met with accident and suffered serious injuries on his body. Due to these injuries his whole body was virtually paralysed. Since, the injuries suffered by him were suffered by the claimant when he was in the employment and was also arising out of an employment; he filed a claim petition u/s 10 of the Workmen's Compensation Act against the respondent No. 1, i.e., employer and the owner of vehicle which he was driving and the insurer, non-applicant No. 2 with whom the said vehicle was insured. The case was contested by the respondents. By award dated 17.1.2002 passed in W.C. (N.F.) Case No. 8 of 1999, the Commissioner, Workmen's Compensation (Labour Court), Dewas awarded a total sum of Rs. 2,63,450 holding that the accident occurred during the course of his employment and arose out of employment, that nature of injuries suffered by claimant was such that it virtually made him 100 per cent disabled in his life, that compensation payable to claimant is to be calculated on

the basis of his monthly salary of Rs. 2,000 and Rs. 50 daily allowance, keeping in view the principle provided in Schedule appended to the Act.

2. The employer (non-applicant No. 1-respondent No. 1) did not file any appeal against this award. Instead, he has filed a review petition before the Commissioner, Workmen's Compensation out of which this appeal arises. It is this review petition which was allowed by the Commissioner by the impugned award whereby the Commissioner reduced the compensation which he had initially awarded under his award dated 17.1.2002 amounting to Rs. 2,63,450 to Rs. 1,35,927. In other words, by the impugned award, passed in review petition filed by respondent No. 1 (employer), the awarded sum of Rs. 2,63,450 is reduced to Rs. 1,35,927. It is against this award, i.e., reduction of award, the claimant has filed this appeal.

3. Heard Mr. Manish Jain, the learned Counsel for appellant and Mr. P.K. Gupta, learned Counsel for respondent No. 2.

4. Having heard the learned Counsel for the parties and having perused the record of the case, I am inclined to allow the appeal.

5. In my considered view, the Commissioner, Workmen's Compensation, committed an error of law in entertaining the review petition filed by the respondent No. 1-non-applicant No. 1 and further erred in allowing it by passing an impugned award thereby reducing the awarded amount from Rs. 2,63,450 to Rs. 1,35,927. It was admittedly not done by the Commissioner by taking recourse to the provisions of Section 152 of the Civil Procedure Code. In other words, it was not a case based on some clerical or arithmetic calculation or typographical error which could be or capable of being corrected by taking recourse to the provisions of Section 152 of Civil Procedure Code. It was also not a case where Commissioner had in fact awarded a total sum of Rs. 1,35,927 to the claimant but as stated supra, due to the mistake of typist or alike, a sum of Rs. 2,63,450 was typed requiring the court to correct it. Indeed only the reduction in awarded sum could be done, if these facts had been present in the case and/or appearing on the face of the award, dated 17.1.2002 but in no other case this could be reduced.

6. I am constrained to say that Commissioner under the garb of so called error apparent on record of the case again went into the facts of the case and the evidence adduced by the parties and then felt that his method of calculation which he had applied while passing the first award was wrong and hence, recalled his original award. This, he could not do in his review jurisdiction but this could be done only by a higher court in an appeal, if filed by the employer against the original award. In other words, the employer, respondent No. 1, was under legal obligation to file an appeal u/s 30 of the Act and seek quashing of the award in its entirety or part modification as the case may be. What an appellate court could do, the review court could not, but vice versa was not possible. The reason is that powers of review court are defined and confined to errors apparent

on the face of record of the case as defined under Order 47, Rule 1 of CPC whereas powers of appellate court are much wider on facts and in law because the entire Us is writ large to attack. It is this distinction which unfortunately was lost sight of by learned Commissioner while entertaining the review and eventually allowing it in favour of respondent No. 1, employer and against claimant-appellant. In my humble view, it is not legally sustainable.

7. Accordingly and in view of the foregoing discussion, the appeal succeeds and is allowed. Impugned award is set aside. As a consequence, the original award dated 17.1.2002 passed in W.C. (N.F.) Case No. 8 of 1999 by Commissioner for Workmen's Compensation (Labour Court), Dewas is restored entitling the appellant to execute against the respondent.

Counsel's fee Rs. 1,500, if certified.