
(1964) 02 KAR CK 0006

In the Karnataka High Court

Case No : Miscellaneous Appeal No. 10 of 1960

Hutti Gold Mines Company

APPELLANT

Vs

Ratnam

RESPONDENT

Date of Decision : 27-02-1964

Acts Referred:

Workmens Compensation Act, 1923 — Section 28, 30, 30 (1)

Citation : (1964) ILR (Kar) 592 : (1965) 2 LLJ 20 : (1964) 2 MysLJ 85

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Judgement

Somnath Ayyar, J.—A company called the Hutti Gold Mines Company, Ltd., is the appellant before us, and this appeal is presented under S. 30 of the Workmen's Compensation Act in which the complaint made is that assessment of the compensation payable to one of its employees, who is the respondent before us, is excessive.

2. The employee was an underground workman in the company. On January 28, 1957 he met with an accident which admittedly arose out of and in the course of his employment. The injury which he sustained during that accident resulted in "fracture dislocation of the body of the lumbar vertebra No. 1."

3. On 26 October, 1957, it is stated, there was an agreement between the employee and the company that the employee should receive from the company a sum of Rs. 420 in full and final settlement of all his claims against the company. That agreement was forwarded by the company to the Commissioner of Labour who forwarded it to the Commissioner of Workmen's Compensation, Raichur, for registration under S. 28 of the Workmen's Compensation Act, 1923.

4. On 10 October, 1957, the employee was discharged on the ground that he was "medically unfit."

5. On 26 May, 1958, an application was presented on behalf of the employee by the general secretary of the Hutti Gold Mines Labour Union, Hutti, in which it was

stated that the agreement which had been forwarded for registration was obtained by undue influence and that it should not be registered. There was also a claim made in that application that there was partial disablement to the extent of 35 per cent, and that the payment of compensation should be directed on that basis.

6. On 26 July, 1958, this application was followed up by yet another application presented on behalf of the employee in the same way, in Which the allegation was that there was total disablement in consequence of the injury sustained during the accident and that the determination of the Compensation should be made on that basis. The Commissioner fully accepted the claim of the employee and determined the compensation payable to be Rs. 2,100. Deducting from this sum of money a sum or Rs. 769 already paid to the workman, he directed the payment of the balance of Rs. 1,304. It is from this determination that the company appeals.

7. It is not disputed before us that if the conclusion reached by the commissioner that there was total disablement is correct, the determination made by the Commissioner is above criticism. But it is strenuously urged that his disablement was only partial and not total. And it is also urged that it was impossible, for the employee, after he had agreed to receive a sum of Rs. 420 under the agreement which he signed on 26 October, 1957, to make any further claim to compensation.

8. On the question whether the agreement on which the company depended could not but have been registered by the Commissioner, it is enough to say that the Commissioner had under S. 28 of the Act the discretion to register it or not. He had the power under the provisions of that section to refuse registration not only if he was satisfied that the agreement was obtained by fraud or undue influence or other improper means but also in cases in which he was satisfied that the agreement ought not to be registered by reason of the inadequacy of the sum or amount which the employee agreed to receive by way of compensation.

9. Sri Sathyanarayana is surely not right when he contends that there was no allegation by the employee at any stage that any undue influence was exercised over the employee by the company. Indeed in the application presented on 26 May, 1958 on behalf of the employee, that allegation was made. But it was really not necessary for the Commissioner to record a finding that there was any such undue influence and it is also quite significant that the Commissioner did not record any such finding, nor are there any sufficient reasons to think that there was the exercise of any such undue influence. It is unnecessary, however, to further explore this matter since it is clear from the order made by the Commissioner, although he did not say in so many words, that he was clearly of the option that the agreement should not be registered. And he was equally satisfied-it is plain-that it should not be registered because the compensation which the employee is supposed to have agreed to receive was, on its face, extremely inadequate. So Sri Sathyanarayana's submission that the

Commissioner had no option but to register the agreement under S. 28 of the Act cannot succeed.

10. The next question is whether there was total disablement as found the commissioner, or whether there was partial disablement as contended for the company.

11. It may appear that this question is a pure question of fact and not a substantial question of law which alone attracts the jurisdiction of this Court as is stated in the first proviso to S. 30(1) of the Act. But Sri Sathyanarayana contended that the appeal does involve a substantial question of law since the question whether the disablement was partial, or total, mainly depends upon the inferences to be drawn from proved facts.

12. I have no doubt in my mind that the inference which the Commissioner drew in this case that the disablement was total and not partial, is open to very little criticism.

13. On 8 October, 1957, Dr. D. K. Narayana Rao of this Hutti Gold Mines Hospital, which is the hospital of the employer, prepared a certificate after the examination of the injury of the employee. In that certificate, he stated that the employee had sustained a fracture dislocation of the body of the lumbar vertebra No. 1 and that he was "medically unfit from further work from 10 October, 1957 due to permanent partial disablement." He proceeded to state that the leg muscles and movement of trunk were normal and that there was no loss in the earning capacity as far as manual labour was concerned but that there was anesthesia perineum of the employee. He stated that the employee complained of impaired erection and absence of sensation when passing urine or at the time of evacuation.

14. It is clear that it is this certificate which was responsible for the discharge of the employee on 10 October 1957.

15. In my option, the very fact that the company discharged the employee on 10 October, 1957 is the clearest proof of the fact that there was a total disablement in this case, particularly when it is seen that the company did not, in its statement of objections before the Commissioner, make an allegations that notwithstanding the serious injury sustained by the employee it was possible for him to obtain some kind of employment although not similar to the one which he was having with the company, somewhere.

Now the expression "total disablement" is defined by S. 2(1)(I) of the Act which reads :

""total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement; provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified

in Sch. I where the aggregate percentage of the loss of earning capacity, as specified in that schedule against those injuries amounts to one hundred per cent; "

The expression "partial disablement" is defined by Clause (g) of that sub-section and that clause reads :

""partial disablement" means where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time : provided that every injury specified in Sch. I shall be deemed to result in permanent partial disablement."

16. It may be, as the certificate granted by the medical officer of the Hutti Gold Mines Hospital on 8 October, 1957 states, that the employee was unfit from further work due to permanent partial disablement. But the opinion of the medical officer that the disablement was only partial though permanent was, of course, not conclusive since on that question it was for the Commissioner to pronounce.

17. The real test to be applied for the determination of the question whether the disablement was partial or total is, whether after the employee sustained the injury, he become incapacitated for all work which he was capable of performing at the time of the accident. If he was so incapacitated, the disablement is total. But if on the contrary, the disablement is of a temporary nature which merely reduces the earning capacity in any employment in which he was engaged at the time of the accident nature, the disablement is of a permanent, or even if the disablement does no more than to reduce his earning capacity in every employment which he was capable of understanding at the time of the accident, the disablement is partial and not total.

18. Indeed, the most significant feature of this case is that, in its statement of objections before the Commissioner, the company never suggested that notwithstanding the fact that the employee had discharged by the company, it was possible for him to obtain employment, however inferior that employment may be to that which he was holding in the company and that he could secure such employment somewhere if he only made an attempt to secure it.

19. On the contrary, in the order of discharge which the company made on 10 October, 1957 it was made to appear that he was medically unfit for any employment. That, in my option, is how we should read the expression "medically unfit" against the words "reason for leaving" in that certificate.

20. It is admitted that when the company decided to discharge the employee on the basis of the certificate of its medical officer, it never offered to the employee any alternative employment such as could suit his impaired physical condition.

21. Sri Sathyanarayana, for the first time, contended before us, though allegation was ever made before the Commissioner, that no such alternative employment could be offered to the employee since no such employment was available with the company. That was not the stand which was taken by the company before the Commissioner.

22. An attempt was made by Sri Sathyanarayana to build an argument that what had resulted in consequence of the accident was a mere reduction in the earning capacity. The extremely slender foundation for this argument was that in the certificate it was state that leg muscles and movement of trunk were all normal, and that there was no loss in the earning capacity as for as the manual labour is concerned. But the mere fact that the leg muscles and the movement of the trunk were normal, does not mean that there is no total disablement. The question whether there is or is not a total disablement has to be decided with reference to the question whether it was it was at all possible, for the employee to secure some employment somewhere although it might not be comparable to the employment which he was having in the company.

23. As observed in Agent, East Indian Railway Vs. Maurice Cecil Ryan, by their lordship of the Calcutta High Court, the person who is in a position to make the best estimate of the total or partial disablement is the employer and, indeed in that case, the employer did offer to the employee a smaller post which, according to the employer, the employee could hold even after the accident. The conclusion that there was total disablement was reached after it was discovered that the employee was incapacitated even from carrying on with the duties of that smaller post.

24. In similar circumstances, the Nagpur High Court reached the same conclusion in the General Manager of the G.I.P. Railway, Bombay v. Sankar AIR 1950 Nag. 201.

25. But, in the present case, all that was done by the company was to discharged the employee as if his injury rendered him unfit for any kind of work. We should not, in my opinion, accept the explanation which was tendered for the first time before this Court that the company did not make any offer to the employee of any other employment since no such employment was possible or available.

26. The proper inference, in our opinion, to be drawn is that not even the company had any doubt in its mind when it discharged the employee, that there was no employment which the employee could hold after the injury, serious as it was. That, in a case like this, it is for the company to suggest in the course of its pleading that the employee could obtain suitable employment commensurate with his physical condition after the injury sustained by him, is clear from the decision of the House of Lords in Tannoch v. Brownieside Coal Company 1929 A.C. 642, in which Lord Atkin at p. 647 observed :

"When a workman has been incapacitated by an accident and the question is whether he can earn wages at any employment, the section seems to provide

that he may meet the suggestion of suitable employment or employments by providing that he has tried to obtain that or those employments and has failed to obtain them owing wholly or mainly to the injury."

27. If there was no such suggestion by the company - as indeed there was none in this case - it was surely unnecessary for the employee to produce evidence that he went here and that he went there and tried to obtain employment somewhere but no one would employ him. That the employee was fully relieved from the duty of producing any evidence of that description is what is clear from the order of discharge which plainly means that he was medically unfit for any employment.

28. I see, therefore, no reason to take a view different from that taken by the Commissioner that the disablement in this case was total and not merely partial.

29. There is really no substance in the argument advanced for the company that there was some kind of estoppel operating against the employee by reason of the claim having been restricted to 35 per cent disability in the application presented on 26 May, 1958. If the employee discovered subsequently that that claim was inadequate, there was nothing to prevent him from amending his claim which indeed he did on 26 July, 1958. It was for the commissioner, in those circumstances, to decide whether the later claim was sustainable and if he found that it was. We should not disturb his conclusion on the ground that on an earlier occasion a smaller claim was made on behalf of the employee.

30. This appeal, therefore fails and is dismissed.

31. Since the respondent has not entered appearance and Sri K. Subba Rao appearing as amicus curiae has assisted us by presenting the case on behalf of the respondent, for which we are very thankful to him, we make no order as to costs.

Kalagate, J.

32. I agree.