
(1972) 08 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3536 of 1970

Indra Shanta Card Board Manufacturing Co.

APPELLANT

Vs

Son Pal and Another

RESPONDENT

Date of Decision : 03-08-1972

Acts Referred:

Employees State Insurance Act, 1948 — Section 53, 61
Workmens Compensation Act, 1923 — Section 4(1)(b)

Citation : (1972) 42 AWR 768

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : Rajendra Kumar, for the Appellant; K.K. Bhattacharya and S.C., for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—M/s. Indra Shanta Card Board Manufacturing Co. has filed this petition Under Article 226 of the Constitution of India, through its Proprietor Indra Pal. The Petitioner prays for a writ of prohibition directing the Additional District Magistrate, Aligarh, not to proceed with case No. 5 of 1960 Son Pal v. Indra Pal and that in any case he should decide the legal issue and the question of jurisdiction first.

2. According to the allegations made in the petition, Petitioner's factory started functioning from 22nd of November, 1967. It was covered under the provisions of the Employees State Insurance Act 1948 with effect from 6th December 1968 and thereafter it made its contribution under the Employees State Insurance Act 1954 regularly. On 9th December, 1968, Respondent No. 1, Son Pal while operating a Calender Machine without Petitioners consent, unfortunately met with an accident and received certain injuries. He filed an application u/s 4(1)(b) of the Workmen Compensation Act, before the Additional District Magistrate Aligarh who is the prescribed authority under the Act, claiming compensation amounting to Rs. 3,000. Tin Petitioner appeared before the Additional District

Magistrate and filed his objections to the claim. He moved an application before the Additional District Magistrate and urged that as Petitioner's factory was covered under the Employee State Insurance Act, Respondent No. could claim disablement benefit under that Act and as provided in Section 61 of the Act, a claim for compensation under the Workmen's Compensation Act is barred. He accordingly prayed that the proceedings under the Workmen's Compensation Act be dropped.

3. The Additional District Magistrate purporting to act u/s 75 of the Employees State Insurance Act, the) referred a question, as to whether or no the claimant was covered by the provisions of that Act, to the Employees State Insurance Court for decision. Before the court Respondent No. 2 Sonpal raised an objection that there was no proper reference by the Additional District Magistrate. Such a reference could not be entertained by State Insurance Court unless it had been made in accordance with the provision of Section 77 of the Act; He prayed that in the circumstances the reference should be returned unanswered. The plea raised by Sonpal was accepted by the Employees State Insurance Court which, by its order dated 13th April, 1970 returned the reference unanswered. When the matter was taken up by the Additional District Magistrate on 17th July, 1970, the Petitioner again moved an application that he should first decide the question about his jurisdiction to go into the claim made under the Workmen's Compensation Act, before taking up the other issues involved in the case. The District Magistrate, however, rejected the application with the observation that the Employees State Insurance Court has already held that the Applicant has failed to make out a case that provision of Employees State Insurance Act are applicable in this case. He also observed that in the circumstances, it was not necessary for him to pass any order and that the application should be filed.

4. The Petitioner has now come up before this Court and contends that the Employees State Insurance Court did not record a finding that the provisions of Employees State Insurance Act are not applicable to the facts of this case. It specifically returned the reference unanswered without recording any finding. In the circumstances, the Additional District Magistrate was bound to decide the question raised by the Petitioner, before proceeding to deal with this issue. He also claims that according to Sections 53 and 61 of the Employees State Insurance Act, jurisdiction of the prescribed authority under the Workmen's Compensation Act is barred.

5. Order passed by the Employees State Insurance Court states as follows:--

...and the reference is returned to ADM (R) without any findings, being unauthorised by law and without jurisdiction.

It is, therefore, clear that the State Insurance Court held the reference to be incompetent and returned the same without recording any finding. Even if the order contains some incidental observations indicating that the court is of opinion that in the circumstances provision of Employees State Insurance Act do not

apply, it does not mean that the court has recorded a finding which is binding on the Petitioner, specially when it in so many words says that it is returning the reference unanswered and without recording any finding on the question raised before it. The Additional District Magistrate, therefore, is in error when he proceeds on the footing that by its order dated 17th July, 1970, the Employees State Insurance Court has already held that the Petitioner has failed to make out a case about the applicability of the provisions of Employees State Insurance Act.

6. This, however, is not the end of the matter. Allegations made in the petition indicate that according to the Petitioner the accident, in respect of which Respondent No. 2 claimed compensation, took place on 9th December, 1968, whereas its factory came to be covered by the provisions of the Employees State Insurance Act on 6th December, 1968. A copy of the claim made by Respondent No. 2 has been filed as Annexure C to the petition. Paragraph 1 of this application shows that according to the case of the workmen, the accident, in respect of which compensation is being, claimed took place on 6th November, 1967. Annexure D to the petition is the written statement filed on behalf of the Petitioner. According to this written statement also the accident took place on 6th November, 1967. The liability to pay compensation was being denied on the ground that on that date Petitioner's factory itself had not started functioning and that the accident did not arise during the course of employment inasmuch as the workman was not required to operate any machine on 6th November, 1967. These allegations made it clear that Sonpal claimed compensation in respect of an accident which is said to have taken place long before 6th December, 1968, when admittedly Petitioner's factory came to be covered by the Employees State Insurance Act.

7. Section 53 of the Employees State Insurance Act, 1948 provides that an insured person or his dependants shall not be entitled to receive or recover, whether, from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under the Act. Before a bar of Section 53 can be pleaded, it has to be shown that Respondent No. 2 sustained the injury as an employee under the Employees State Insurance Act. Who would be an employee under the Act, has been defined in Section 2(9) of the Act, as meaning a person employed for work in or in connection with the work of factory, or establishment to which the Act applies. A person, therefore, can sustain injury as an "employee under the Act", only if at the time of sustaining the injury he was employed in a factory or establishment which was covered by the provisions of the Employees State Insurance Act. In this case, at the time of accident, which is said to have taken place on 6th November, 1967, admittedly Petitioner's establishment was not covered by Employees State Insurance Act. Section 53 of the Employees State Insurance Act, therefore, cannot bar the claim, under the provisions of the Workmen's Compensation Act, made in this case.

8. Similarly, the Petitioner can successfully claim a bar of Section 61 only if he is able to satisfy that Respondent No. 2 was entitled to any of the benefits provided by the Employees State Insurance Act. Since the accident is said to have taken place at a time when Petitioner's factory was not covered by the provisions of the Employees State Insurance Act, it is difficult to visualise how Respondent No. 2 was entitled to any benefit under the Act. In the circumstances, the ultimate decision of the Additional District Magistrate, to proceed with the claim made by Respondent No. 2, under the provisions of Workmen's Compensation Act, is correct.

9. In this view of the matter this is not a fit case in which this Court should exercise its extraordinary powers Under Article 226 of the Constitution and quash the order which brings into existence a correct legal position.

10. The petition accordingly fails and is dismissed with costs to Respondent No. 1. The stay order dated 6th August, 1970, is discharged. The prescribed authority shall now proceed to decide the application filed by Respondent No. 1 expeditiously. Petition dismissed.