
(2011) 12 RAJ CK 0060
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1522 of 2006

Jamat Singh

APPELLANT

Vs

The Commissioner, Workmen's Compensation Act and Others

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 28, 8

Citation : (2012) 132 FLR 568 : (2012) LLR 309

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dr. Justice Vineet Kothari

1. The present writ petition has been filed by the employer Jamat Singh against the order dtd.6.2.2006 passed by the Workmen Compensation Commissioner on the application filed by the said employer that on account of compensation of Rs.1,00,000/- paid to the legal heirs of deceased Ramesh, whose death took place during the course of employment of said Ramesh with the present petitioner Jamat Singh and upon such mutual agreement, since the amount of compensation of Rs.1,00,000/- has been accepted by the legal heirs of the said deceased, therefore, the execution of the award passed by the Workmen Compensation Commissioner dtd.29.10.2003 in case No. C/F/4/2000 - Bhura Ram S/O Sukha Ji and Smt. Vagu Devi W/O Bhura Ram, parents of the deceased Ramesh need not be executed against the said employer. The said award was passed after hearing the employer by the Workmen Compensation Commissioner on 29.10.2003, a copy of which has been placed on record during the course of arguments by the learned counsel for the petitioner and according to which the compensation of Rs.2,02,600/- was directed to be paid by the employer with interest @12% per annum from 1.6.2000 and also penalty of Rs.20,160/- was directed to be paid by him.

2. The learned counsel for the petitioner Mr. Nitin Trivedi submitted that since compromise or agreement can be arrived at any stage between the parties and such a compromise did take place between the parties on 19.12.2003 after the said award was passed on 29.10.2003, therefore, the execution proceedings and auction proceedings undertaken in that regard vide Annex.P/4 was not justified and tractor No. RJ16R-5727 of the present petitioner - employer could not be attached and auction for recovery of awarded sum. He drew the attention of the Court towards Section 28 of the Workmen Compensation Act, 1923, which is reproduced below for ready reference :

28. Registration of agreements.-

(1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half- monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability] a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that-

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b)...

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half- monthly payment or otherwise, or an agreement as to the amount of compensation payable [to a woman or a person under a legal disability] ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement 5[and may make such order] including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub- section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

3. The learned counsel for the petitioner, therefore, submitted that the impugned attachment and auction proceedings vide Annex.P4 deserve to be quashed in the present writ petition.

4. No body has appeared on behalf of the respondents despite service to contest the present writ petition.

5. The learned counsel for the petitioner has failed to cite any case law in support of his contention.

6. Having heard the learned counsel, this Court is of the opinion that the agreement in the present case after adjudication of the award by the Workmen Compensation Commissioner at lesser amount than the awarded sum cannot be accepted and same does not fall within the ambit and scope of Section 28 of the Act reproduced above. The said provision on a bare reading applies where the amount of any lumpsum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner.

7. This provision clearly envisages a settlement or compromise between the parties before any adjudication is made and after such settlement is arrived at before such adjudication, a memorandum can be sent to the Commissioner who upon being satisfied about its genuineness may record the same in the register in the prescribed manner. This is obviously to cut short the adjudication proceedings and put an end to the dispute upon mutual settlement between the parties. The said provision cannot be invoked or used by the employer after adjudication has already been made by the Workmen Compensation Commissioner. The beneficiary under the award obviously cannot be expected to settle for lesser amount, after he is aware of the higher compensation already awarded to him. The compromise or agreement in the present case was apparently not done in the presence of learned Workmen Compensation Commissioner nor the said compromise or agreement has been verified by the Workmen Compensation Commissioner. This compromise appears to be a device to dupe the poor beneficiary under the award of the Workmen Compensation Commissioner and such an agreement cannot be said to have any valid sanctity of law. The same is certainly not within four corners or parameters laid down in Section 28 of the Act. Section 8 of the Act clearly envisages that distribution of compensation by the Commissioner himself and amount of award has to be deposited by the employer with the said Commissioner and Section 8(1) clearly stipulates that no such payment would be made by the employer directly and it cannot be deemed to be payment of compensation. In view of such prohibition under the Act, the compromise in the present case appears to be a camouflage and device to defeat the award in favour of claimants and same cannot override the award itself. The same deserves to be ignored altogether.

8. Consequently, the present writ petition is dismissed and the petitioner employer is directed to deposit the entire amount of awarded sum before the Workmen Compensation Commissioner within a period of three months from today including interest and penalty and the same may be disbursed to the claimants in accordance with the award and the report of the same may be sent

to this Court within a period of three months from today. No order as to costs.