

(2012) 01 CHH CK 0054
In the Chhattisgarh High Court
Case No : M.A. (C) No. 306 of 2007

Jharkhand Ispat Udyog Pvt. Ltd.

APPELLANT

Vs

Manikdas Manikpuri and Another

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Workmens Compensation Act, 1923 — Section 21, 21(1), 21(1)(b), 8

Citation : (2012) ACJ 2629 : (2013) 1 LLN 659

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Upendra Bharat, for the Appellant; L.C. Dash, for the Respondent

Judgement

Agarwal, J.—The instant employer's appeal is directed against the order dated 22.12.2006 passed by Commissioner for Workmen's Compensation-cum-Labour Court, Bilaspur in Case No. 905/W.C.A. 2004 (N.F.). Personal injury is caused to Manikdas Manikpuri, respondent No. 1, on 24.8.2003 by accident arising out of and during the course of his employment resulting in amputation of his right leg below knee. The above accident had occurred at village Ramgarh, District Hazaribagh, Jharkhand. Manikdas Manikpuri, respondent No. 1, is resident of Mauza Murkuta, Post Office Dagauri, Tahsil and District Bilaspur, Chhattisgarh.

2. Manikdas Manikpuri, respondent No. 1, preferred claim petition before Commissioner for Workmen's Compensation-cum-Labour Court, Bilaspur, claiming compensation for the injuries sustained by him in the said accident.

3. On a close scrutiny of the evidence led, Commissioner awarded Rs. 2,58,336 as compensation against the appellant. Hence, this appeal.

4. The only question raised by Mr. Upendra Bharat, learned counsel appearing for the appellant, is that as per proviso to section 21(1) of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place without his notice in

the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned. According to him, the above provision is mandatory in nature and the order has been passed by the Commissioner in utter violation of the provision, inasmuch as the order has been passed without giving notice to the Commissioner for Workmen's Compensation, Hazaribagh and to State of Jharkhand and, therefore, the order impugned suffers from legal infirmity which deserves to be set aside.

5. On the other hand, Mr. Dash, learned counsel appearing for the respondent No. 1, would submit that the proviso to section 21(1) of the Act is not mandatory but directory. In response to the letter sent by respondent No. 1 to Central Government and Deputy Labour Commissioner-cum-Commissioner for Workmen's Compensation, Hazaribagh, the Commissioner, Hazaribagh, intimated him vide reply dated 27.7.2004, Exh. P1, that he can file claim petition either before the Commissioner at Hazaribagh or at Bilaspur. The above reply can be treated as substantial compliance of the provision contained in proviso to section 21(1) of the Act.

6. I have heard learned counsel appearing for the parties and perused the material available on record including the award.

7. Before adverting to the facts of the case, it would be necessary to refer section 21 of the Act which reads as under:

21. Venue of proceedings and transfer.--(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which--

(a) the accident took place which resulted in the injury; or

(b) the workman or in case of his death, the dependant claiming the compensation ordinarily resides; or

(c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the workman, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1-A) If a Commissioner, other than the Commissioner with whom any money

has been deposited u/s 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same."

8. Section 21(1)(b) of the Act clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides.

9. The amended section 21 has been specifically introduced in the Act by the Amending Act 30 of 1995 w.e.f. 15.9.1995 in order to benefit and facilitate the claimants.

10. While interpreting the above provision of section 21 of the Act, the Apex Court in case of Morgina Begum v. Managing Director, Hanuman Plantation Ltd., 2007 ACJ 2848 (SC), has held:

(7) The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependants who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue such a claim petition because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen... Welfare legislation should be given a purposive interpretation safeguarding the rights of the have-nots rather than giving a literal construction. In case of doubt the interpretation in favour of the worker should be preferred...

11. Proviso to section 21(1) of the Act provides that in case the Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he shall give a notice to the Commissioner having jurisdiction over the area and the State Government concerned.

12. The purpose behind the above provision appears to prevent duplication of the claims.

13. If a provision is mandatory an act done in breach thereof will be invalid, but if it is directory the act will be valid although the non-compliance may give rise to some other penalty if provided by statute. Mandatory enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

14. While considering non-compliance with a procedural requirement, it has to be

kept in view that such a requirement is designed to facilitate justice and further its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory. [Please see Principles of Statutory Interpretation, 12th Edn., by Justice G.P. Singh, Chapter V, p. 396].

15. The proviso to section 21(1) of the Act do not provide consequence of noncompliance.

16. Now reverting to the facts of the case, it is crystal clear that the Commissioner, Hazaribagh was aware that the claimant could file claim petition before the Commissioner, Bilaspur, indisputably, claimant had not filed any claim petition before the Commissioner, Hazaribagh and, therefore, there is no question of duplication of claim; and the above plea has not been specifically raised by the appellant before the Commissioner, Bilaspur.

17. Considering the above facts of the case in the light of legal position discussed hereinabove, in my opinion, the above provision is not mandatory but directory; the impugned order has been passed in substantial compliance of the proviso to section 21(1) of the Act and no substantial question of law arises for determination of this court in instant appeal.

18. For the foregoing, the appeal being devoid of merit is liable to be and is hereby dismissed. No order as to costs.