
(2008) 05 AHC CK 0062
In the Allahabad High Court

Kanpur Jal Sansthan

APPELLANT

Vs

Smt. Champa Devi through Sri Gyanendra Mishra

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Employees Compensation Act, 1923 — Section 10, 17

Citation : (2008) 4 AWC 3286 Supp : (2008) 4 AWC 3286 : (2008) 118 FLR 560 : (2009) 2 SLJ 278

Hon'ble Judges : Shishir Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—This appeal has been preferred by the appellants from the judgement and order dated 6th September, 2007, passed by the concerned Commissioner under Workmen's Compensation Act, 1923, awarding a sum of Rs. 3,89,280/- as compensation payable to the claimant/s and in case of default payment of interest @ 6% simple interest per annum from the date of accident i.e. 02nd October, 2002, till the date of payment.

2. By challenging such judgement and order in this appeal, Mr. Anil Sharma, leaned counsel appearing for the appellants, contended that the judgement and order passed by the learned Commissioner is contrary to law and equity. According to him, the deceased died in an accident on 02nd October. 2002. The application to have compensation u/s 10 of the Workmen's Compensation Act, was made on 02nd May, 2006 i.e. after about four years from the date of accident. According to law, such type of application have to be made within a period of two years from the date of occurrence. However, the Commissioner is not powerless to decide the claim for compensation even beyond such period provided he is satisfied with the sufficiency of reasons for condoning the delay. Fact remains that after the death of deceased, the widow was given service in appropriate department of the office where her husband was working under Rule 5 of The Uttar Pradesh Recruitment of Dependents of Govt. Servants Dying in

Harness Rules, 1974. The service was given to the widow when other members of the family were minors. Additionally other benefits inclusive of family pension were given to the widow of the deceased. According to him, the claimant cannot be doubly benefited by means of action under the aforesaid Rules, 1974 as well as under Workmen's Compensation Act, 1923.

3. He has relied upon persuasive value of the judgement of learned Single Judge reported in Saboo @ Sobhoo Mali Vs. Tata Iron and Steel Co. Ltd., and 1999 (83) FLR 1065 , K.R.S. Selvaraj Swamikannu v. Commissioner For Workmen's Compensation and Ors., to establish that the delay in filing the application should be considered carefully based on sufficiency of cause. He also relied upon the judgement of three Judges Bench of Supreme Court reported in Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others, Sitaram Ramcharan and Ors. v. M.N. Nagrashana, Authority under the Payment of Wages Act for Ahmedabad Area, Ahmedabad and Ors., to establish that even in case of similar provision under Payment of Wages Act, it was held that failure of establishing sufficient cause for delay in filing an appropriate application after expiry of period of limitation is fatal for his/their claim.

4. He further relied upon a Division Bench judgement of the Court reported in AIR 1965 Mys 306, Smt. Zaibunnisa v. The Divisional Superintendent Southern Railway, Hubli, to establish that once the compensation has been granted in one Act i.e. Railways Act, therein further compensation cannot be granted under similar provision i.e. Workmen's Compensation Act. It was however, held that it is well recognised rule of construction that although the statement of objects and reasons might be looked into for the purpose of ascertaining the historical background of the legislation, no support from that statement of objects and reasons can be derived for the interpretation of law, as it stands to ascertain the scope in the ambit of enactment even after its amendment.

5. He further relied upon a judgement of the Supreme Court reported in 2008 (2) ESC 212 , A.P.S.R.T.C. Musheerabad and Ors. v. Sarvarunnisa Begum, to establish that when in a case of death of the husband in harness the widow expressed her willingness to accept the additional monetary benefits in lieu of employment, as per the scheme, apart from other benefits to get over the financial constraints on account of sudden death, she would not be entitled to claim the compassionate appointment. By citing this judgement, he said that his case is other way round. Here the compassionate appointment has already been received by the widow apart from other benefits, therefore, she cannot get further compensation.

6. Mr. S.N. Dubey, learned Counsel appearing for the respondent, contended that interest of the minors is not saved by virtue of such compassionate appointment. They have independent right to recover the amount of compensation under the independent Act i.e. Workmen's Compensation Act, 1923. In support of his contention, he relied upon a judgement report in 1987 (54) FLR 374, P.P. Muhammed Koya v. N.V. Balan, to establish the workman cannot be cabined,

confined and cribbed because he had named a sum in his application as lump sum payment. This may be due to an error in calculation or like reasons. Be that as it may, the language of the Statute is clear, and the message cannot be missed. The workman is entitled to get, what the Statute entitles him to get.

7. He further cited the judgement of learned Single Judge as reported in 1995 LAB.I.C. 2750, New India Assurance Company Ltd. v. Raj Kishore Nayak and Ors., for its persuasive value to the extent that as per the provision of the Act, the defect or irregularity in a notice shall not be a bar to entertainment of the claim.

8. He further relied upon the judgement reported in 1980 (41) FLR 100, E.K. George v. Thankan, to establish that in case of accident if offer of job for some wages are given there cannot be any answer of loss of any earning. He further cited a judgement reported in 1987 (55) FLR 129, Management of Sree Lalithambika Enterprises, Salem v. S. Kailasam, to establish that loss of earning cannot be confined to the present capacity to earning capacity in future also is an important factor. Ultimately, he has relied upon a Division Bench judgement of Jharkhand High Court reported in 2008 (116) FLR 770, General Manager, BCCL, Dhanbad and Ors. v. Smt. Dukhani Manjhiain, to establish that even when under any respective Rule or agreement a provision has been made to give employment to the dependant of the injured yet compensation is payable under Workmen's Compensation Act in view of Section 17 therein. We have gone through Section 17 of the Act and found that it has tried to make relevant in case of death. Section 17 of the Act is as follows:

17. Contracting out.-- Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

According to us, the aforesaid Section 17 of the Act does not seem to apply in a case of injury. According to learned Counsel appearing for the respondent, the same is applicable in case of death as well as injury. In any event, the case of General Manager, M/s BCCL, Dhanbad and Ors. (supra) is made applicable in case of personal injury alone. However, clear import of the Section is that if by construction or agreement something has been received from the employer, one should not be debarred from claiming any compensation under the Act. This section is made for the welfare of the workmen so that they cannot be compelled by forcible contract or agreement having no equal bargaining position. Therefore, such submission cannot be made applicable in the present case.

9. The Workmen's Compensation Act is beneficial piece of legislation like other beneficial pieces of legislation. The Skim of such type of legislation is to recover him from immediate financial constraint occurred due to an accident but it will not be used to extract money or misuse provisions of the Act. The equity is not

one way traffic. Filing of claim application after about four years is clear case of afterthought. No explanation is available under the order as to why the application will be entertained after about four years from the accident. Even if the law is tilted towards the recipient by virtue of beneficial piece of legislation but the equitable principle can not run contrary to aforesaid principle. Grievance of the claimant is highly suspicious.

10. Thus, in totality the appeal is allowed on contest on the informal papers, as agreed upon by the parties. The order impugned under appeal is set aside. However, no order is passed as to costs.

Shishir Kumar, J.

11. I agree.