
(1997) 03 KL CK 0037
In the High Court Of Kerala
Case No : M.F.A. No. 388 of 1989

K.R. Jagadeesan

APPELLANT

Vs

Indian Crump Rubber Factory and Another

RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:

Workmens Compensation Act, 1923 — Section 2

Citation : (1997) 2 ILR (Ker) 721 : (1997) 2 LLJ 536

Hon'ble Judges : S. Marimuthu, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : K. Gopalakrishna Kurup and B. Ravikumar, for the Appellant; Mathai M. Paikaday, P. Madhavan and Nelson J. Manayil, for the Respondent

Final Decision : Allowed

Judgement

Mohammed, J.—This is an appeal filed u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") against an order passed by the Workmen's Compensation Com- missioner (Deputy Labour Commissioner, Kottayam) u/s 22 of the Act.

2. The main question that arises for determination in this appeal is whether "bonus" paid to an employee can be taken into consideration while determining the "wages" as defined in Section 2(m) of the Act.

3. The short facts required for the decision of the above question are as follows: The appellant is the applicant in W.C.C.No. 10 of 1988 on the file of the Workmen's Compensation Commissioner, Kottayam. First respondent was the "employer" and the second respondent was the insurer of the workman at the time of accident. While the appellant was working on a hammer roller machine in the factory on July 27, 1987 he sustained certain injuries by an accident. The injuries are as follows:

i) Loss of index, middle and ring fingers at the metacarpophalangeal joint level.

ii) Crush injury on the thumb and little fin gers with extensive skin loss.

That the sustaining of injuries was immediately reported to the first respondent. Since the injuries were sustained in the course of his employment under the first respondent, workman was entitled to compensation of Rs. 1,04,960/-. However, the first respondent refused to pay the above amount though demand was made in that behalf. That was the background for the filing of the application before the Commissioner by the appellant-workman claiming the above compensation for personal injuries caused to him by the accident.

4. The Commissioner after the enquiry came to the conclusion that the workman is entitled to a compensation of only Rs. 44,506.90 and accordingly passed an award on February 27, 1989 directing the insurer, New India Insurance Company Limited, to deposit the above sum with simple interest at 6% per annum. The applicant being aggrieved by the inadequacy of the above compensation has filed this appeal.

5. Heard the learned counsel for the appellant and also the first respondent employer.

6. In substance, the contention of the appellant is, the "monthly wages" determined by the commissioner for working out the lump sum compensation payable to the appellant is not just or proper. The Commissioner has found "monthly wages" of the appellant at the relevant time as Rs. 428/-. In order to arrive at this figure, the Commissioner has taken total actual wages for a period of twelve months as per Ext. R1 namely, Rs. 5141/- and then divided by twelve. Thus total compensation payable to the appellant was fixed as Rs. 44,507/-. This fixation according to the counsel, does not conform to the provisions contained in Sections 2(m), 4 and 5 of the Act.

7. Section 5 deals with the method of calculation of wages. It is an admitted case that the appellant workman had been in the service of the employer during a continuous period of not less than twelve months immediately preceding the accident and therefore Clause (a) of Section 5 governs the question here. The said provision is as follows:

"5. Method of calculating wages.- In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely-

(a) Where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the Workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;"

The expression "monthly wages" contained in the main part of the Section means the amount of wages deemed to be payable for a month's service

whether the wages are payable by the month or whatever other period or at piece rates. The monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period. After so calculating the monthly wages the amount of compensation shall be at the rate specified in Section 4. There is a finding by the Commissioner in this case that the disability suffered by the applicant is total and permanent. Therefore, Section 4(1)(b) will apply in this case. That means the compensation shall be an amount equal to fifty percent of the monthly wages of the injured workman multiplied by the "relevant factor". The "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in] the first column of that Schedule specifying the age of the workman on the date of the accident as is provided in the Explanation I to Section 4. In this case it has come out in evidence that the applicant was aged 30 on the date of the accident and hence "relevant factor" applicable is 207.98.

8. The whole controversy in this case centres round the calculation of "monthly wages". It is not the actual wages paid to the workman at the relevant period but the amount of wages deemed to be payable for a month's service. In this context it is apt to examine what actually constitutes "wages". The expression "wages" has been defined in Section 2(m) as thus :

"Wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.

In substance, the "wages" includes any privilege or benefit which is capable of being estimated in money except those which are excluded in the Section. Such benefit shall be incidental to the service of the workman. The issue involved in this case is whether forty per cent of bonus as evident from Ext.R2 would come within the definition of "wages". If such bonus comes within the meaning of "wages" then the impugned order of the commissioner requires modification. The commissioner has obviously refused to include "bonus" as part of the wages.

9. The Payment of Bonus Act, 1965 provides for payment of bonus to persons employed in a factory and in every other establishment employing twenty or more persons. The bonus is something given in addition to what is usually or strictly due; money or anything given in addition to employee's usual pay or salary. Horwill, J. said:

"The granting of bonuses, gratuities, pensions, and the like to employees is not out of charity. They are given in order to make labour more contented and form part of the remuneration of the workers for their services. Bonuses, for example, may in one sense be regarded as recognition of the right of the workers to share in some measure in the profits of the Co. and encourages workmen to work

harder, in the knowledge that by doing so they will secure more gain to themselves."

(C. Bakthavatsalu Nayudu v. The Chrome Leather Co. Ltd. AIR 1951 Mad 856. The Supreme Court in The Sree Meenakshi Mills, Ltd. Vs. Their Workmen, has described the nature of bonus as below :

"The true nature and character of the workmen's claim for bonus against their employers is well settled. Bonus is not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor it is a matter of deferred wages. The term "bonus" is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained."

Relying on the above said observation, the Division Bench of the Bombay High Court in Maharashtra Sugar Mills Ltd. Vs. Ashru Jaiwant Tribhuvan, a case arising under the Workmen's Compensation Act, held that the bonus can be included in wages for purposes of calculation of compensation payable to the "workman" who has suffered permanent disablement either total or partial. The claim for bonus being a right of the workman, independent of the willingness or otherwise of the employer, is a benefit within Section 2(m) of the Act. This is a beneficial legislation in favour of a workman who suffered employment injuries and who would be rendered without any means of sustenance if they could not make the same earnings as before or fell completely out of employment. The word "benefit" contained in Section 2(m) therefore gets widest import so as to take in profit bonus used in the industrial sense. The conception of "industrial bonus" is no longer regarded as an ex. gratia payment. In this context, it is apt to be recalled what the Apex Court said in The Central Bank of India Vs. Their Workmen, . It said:

"There can be now no doubt, however, that profit bonus, in the industrial sense in which we now understand it, is a share in the profits "of the company; it is labour's share of the contribution which it has made in earning of the profits."

In whatever sense the word "bonus" is used or outlined it will certainly come within the concept of "benefit" envisaged in Clause (m) of Section 2.

10. Now the facts of this case will have to be examined within the framework of the legal premises discussed herein before. According to the counsel, the daily wages paid to the applicant was Rs. 24.60. The forty per cent of the bonus paid of the said wages would come to Rs. 9.84. Thus the total wages deemed to be payable for a day is Rs. 34.44. When this amount is multiplied by 30, it will come to Rs. 1,032.00 and an amount equal to fifty per cent of the maximum wage, namely Rs. 1,000/- is Rs. 500/-. This amount has to be multiplied by the relevant factor, 207.98 in view of the provisions contained in Section 4. Thus the total compensation payable to the appellant would be Rs. 1,03,990/-. We hold that the claimant is entitled to the aforesaid compensation with interest at the

rate fixed by the Commissioner. The order passed by the Commissioner in W.C.C.No. 10/88 is modified to the above extent. The appeal is allowed as above. No order as to costs.