

(1997) 04 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 4006 of 1997

M. Rahimkan

APPELLANT

Vs

Deputy Commissioner of Labour (Commissioner for
Workmen's Compensation) and Others

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Workmens Compensation Act, 1923 — Section 30(1), 4

Citation : (1997) 2 CTC 558

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant;

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner who has already suffered by an order in W.C.Case No. 112 of 1993 on the file of Commissioner for Workmen's Compensation has approached this Court by way of the present writ petition seeking a writ of declaration declaring the third proviso to Section 30(1) of Workmen's Compensation Act, 1923 as violative of Articles 14 and 21 of the Constitution of India, consequently seeks direction to set aside the order in W.C.Case No. 112 of 1993 dated 11.12.1996.

2. The case of the petitioner as seen from the affidavit filed by the petitioner is briefly stated hereunder:-

According to the petitioner, he is a Diploma Holder in Electrical Engineering and running a small Electrical Works shop doing rewinding of electrical motors and repairing of electrical appliances and job works. After starting of the factory, the second respondent management started giving job works to him for motor rewinding. The second respondent engaged some persons including the deceased Sivalingam the husband of the third respondent to do some civil repair work on the building on 20.5.1993 and the said Sivalingam is said to have slipped from

the scaffolding and his left leg got into the window panel and succumbed to his injuries on the very same day. Taking advantage of his tender with the second respondent, the third respondent filed a claim for compensation before the first respondent. The first respondent after hearing the parties, passed an award holding that the deceased Sivalingam was employed under the petitioner and he died on 20.5.1993 due to the accident. The first respondent has also quantified the compensation as Rs. 81,540 payable by the petitioner to the third respondent.

3. Initially he filed the above petition challenging the award in W.C. Case No. 112 of 1993 dated 11.12.1996. In view of the fact that a statutory appeal lies to this Court u/s 30 of the Workmen Compensation Act, maintainability of the writ petition was questioned. Therefore, the learned counsel for the petitioner amended the prayer in the writ petition. Accordingly, now he seeks to declare that the 3rd proviso to Section 30(1) of the said Act which compels the aggrieved person against the award of the Commissioner, Workmen's Compensation Act to deposit the entire compensation amount and enclose deposit receipt along with the memorandum of grounds of appeal when he filed an appeal before this court u/s 30(1) of the said Act in violative of Constitution of India. In the additional affidavit he questions the Explanation II to Section 4 of the said Act which reads as follows:-

Where the monthly wages of a workmen exceed one thousand rupees, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only.

He already challenges third proviso to Section 30(1) which is extracted hereunder:-

...Provided further that no appeal by an employer under Clause (a) shall lie unless the Memorandum of Appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under order appealed against.

4. Mr. Ayyadurai, learned counsel appearing for the petitioner with regard to Explanation II to Section 4 submitted that the said explanation treats the big employer and the small employer alike which cannot be correct. Likewise, according to him, the third proviso to Section 30 is arbitrary and discriminatory. In that it does not make distinction between the small employer and the big employer while requiring the deposit as the amount awarded as compensation. He also submitted that the requirement of depositing the amount has no rational nexus with the object sought to be achieved. The impugned provisions are totally arbitrary and violative of Article 14 of the Constitution of India.

5. In have carefully considered his submission. The Workmen's Compensation Act, 1923 which is a Central Act (Act 8 of 1923) was enacted in order to give relief to the workmen who suffered injury during the course of employment and to the legal heirs to claim appropriate compensation in case of death of the

workmen in the course of employment. The Act came into force on 1.7.1924 Section 3 deals with employee's liability for compensation. If any personal injury is caused to a workman by accident arising out of and in the course of employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. There is also a proviso in Section 3 and it enumerates the cases in which the employer need not pay any compensation. Before considering Explanation II to Section 4, it is useful to see the entire section and the same is extracted hereunder:-

4. Amount of Compensation:- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results an amount equal to forty per cent of from the injury. the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of twenty thousand rupees, whichever is more; (b) Where permanent total disablement an amount equal to fifty per cent, of results from injury. the monthly wages of the injured workman multiplied by the relevant factor: or an amount of twenty-four thousand Rupees; whichever is more; Explanation 1 x x x Explanation II Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only. In the light of the amount of compensation to be claimed as per Clause (a) and Clause (b), it is not open to the petitioner to contend that there must be separate clause for big employer and small employer. A plain reading of Explanation II shows that where the monthly wages of workman exceed one thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only. Even for a plain reading of Sub-section (1)(a) and (b) of Section 4 and Explanation II, I am unable to understand how the Explanation II discriminates any of the provisions of the Act or Constitution of India. As a matter of fact, the learned counsel for the petitioner is unable to elaborate except saying that the petitioner who is a small employer cannot be treated like big employer. In the absence of any acceptable argument, I do not find any substance in the first submission.

6. With regard to third proviso to Section 30(1), according to the learned counsel for the petitioner, the said condition is arbitrary and discriminatory. He submitted that the proviso uses the word appellant which means even a person who is not an employer like the petitioner in this case has to deposit the amount even though he may not be an employer. I am unable to accept even the second contention also, since admittedly he was also one of the parties before the Commissioner, for Workmen's Compensation. In pursuance of notice from the said authority the petitioner filed a counter statement. He was represented by a counsel. He had an opportunity to put forward his case and the authority after considering the petitioner's case, passed an award holding that the deceased was an employee under the petitioner and directed to pay the amount. In those circumstances, since he being an aggrieved person against the award as per

Section 30(1), an opportunity is given to him to file an appeal before this Court and in the appeal, it is always open to him to canvass the finding of the authority. As already stated, the Act is intended to benefit the victims of the workmen who suffer injuries during the course of employment and to help the legal heirs of the deceased workmen. Under the scheme of the Act, any serious injury to the workman has to be compensated quickly. The procedure contemplated under the Act is also summary in nature. The selection of the employment to which the Act is applicable, is indicative of an application of mind on the part of the authorities to all the relevant factors. Segments of accident prone activity are particularly noted where a workman plods along hazardous precipice if potential injury. It is only proper that he or his family is protected by quick first aids or effective treatment. Medical treatment is by itself insufficient. Economic treatment is of as much value. Without complying with the order the employer is allowed to file an appeal and the said appeal is entertained by this Court, it will take longer time for disposal. In order to avoid the above contingency, Parliament thought that before filing an appeal, the employer against whom an award has been passed under the provisions of the Act has to deposit the amount and enclose the receipt along with the memorandum of grounds of appeal. I am of the view that in a sense it protects the affected employee or the legal heirs of the deceased employee.

The workman can feel secure about the compensation payable to him by this statutory insistence. Viewed from the point of view of the employer, it is not difficult for him to secure in these days necessary financial aid from the authority or institutions handling money. The inconvenience caused in the process is no reason to strike down the statutory provision. The situation would not however, justify invalidating the proviso to Section 30 which requires deposit of compensation before resorting to a leisurely appeal.

7. The validity of the very same proviso namely proviso 3 to Section 30(1) of the Act was considered by Nainarsundaram, J., (as he then was) in a decision reported in *Nathamani Gounder v. Kaliammal*, 1986 99 L.W. 463. The conclusion of the learned Judge is more useful for our case and the same is extracted hereunder:-

...R. Gandhi, learned counsel for the petitioner, would contend that the third proviso to Sub-section (1) of Section 30 of the Act enjoins upon the employer to deposit the amount payable under the award before an appeal is entertained, the learned counsel would submit that the said proviso practically denies the right of appeal. I am not able to spell out that the said proviso denies the right of appeal as such. By enjoining the appellant to deposit the amount, the subject matter of the appeal, it cannot be stated that the appeal remedy is taken away. It is an age old principle of law that the right of appeal is not a natural or an inherent right attaching to any litigation. A right of appeal as such does not exist and cannot be assumed unless expressly given by statute or by rules having the force of statute. An appeal being a creature of statute, the right of appeal can always

be limited by the law which gives that right and the provisions of the statute setting the conditions for preferring an appeal cannot be held to be bad in law. Even if a statute denies a right of appeal, that statute cannot be held to be a bad legislation. If a legislation thinks, in a particular case, that no appeal should be provided or the right of appeal which it provided should be exercised in a particular manner and subject to certain conditions, that legislation has always been countenanced to be a proper legislation. The reason behind the said proposition is, the right of appeal is a creature of statute and its exercise, its scope and its results shall always be controlled by the provisions of the statute which created that right. Hence, on the ground that there is no effective alternative remedy available for the petitioners, I do not find warrant to entertain the writ petition. Accordingly, the writ petition is dismissed.

8. There is also another judgment of the Kerala High Court reported in *Narayanan Nair Vs. Union of India (UOI)*, . The conclusion of the Kerala High Court with reference to pre-requisite deposit as found in third proviso to Section 30(1) is extracted hereunder:-

Section 30 of Workmen's Compensation Act provides an appeal before this Court, subject to the conditions contained therein. In the case of an employer, he is bound to deposit the amount awarded by the Commissioner before availing of the appeal. This provision is challenged by the petitioner as ultra vires.

I am not satisfied that the challenge is substantial enough. Under the scheme of the Workmen's Compensation Act, any serious injury to him as to be compensated, and quickly too. Time was when even an illness for a small spell of time could shut out the flame of life in a workman's family. With the main candle shut out, the family itself will be in gloom and left in the cold. A summary procedure is therefore provided under a benign enactment, so that the workmen or his family in dire distress could get some support in or solace from the employer or his contractor. The selection of the employment to which the Act is applicable, is indicative of an application of mind on the part of the authorities to all the relevant factors. Segments of accident prone activity are particularly noted where a workman plods along hazardous precipice of potential injury. It is only proper that he or his family is protected by quick first aids or effective treatments. Medical treatment is by itself insufficient. Economic treatment is of as much value.

Employers get attracted to a brisk business or other organised commercial activity, by the possibility of getting attractive profits. Generally the employers would be persons who by their intrinsic work or institutional arrangements, are in a position to provide various contingencies including accidents in relation to their establishment or the workmen. An appeal can pend for long. This period could be used for dishonest manipulation by an unscrupulous employer. The contingency has to be avoided. One sure way of avoiding such a situation where the workman will only have a victory was to insist on the compensation payable, as soon as the finding of liability is entered by the Commissioner. In a sense, it protects the

competing interest of the employer of the workman. The workman can feel secure about the compensation payable to him. By this statutory insistence. It may not be altogether unjust if in such a situation, actual payment is postponed by a short period. The appeal then could be processed, heard and disposed of without undue hustling or unnecessary strain.

Viewed from the point of view of the employer, it is not difficult for him to secure in these days necessary financial aid from the authority or institutions handling money. Even if it be a bit inconvenient, an ordinary employer would have the wherewithal to meet payments of that nature. The inconvenience caused in the process is no reason to strike down the statutory provision. If in a given situation, compliance with the condition, regarding deposit of compensation as determined by the Commissioner is avoidable, other circumstances may have to be found out for relief against the same. The situation would not, however, justify invalidating the proviso to Section 30 which requires deposit of compensation before resorting to a leisurely appeal.

9. In view of the decisions referred above and in view of the fact that the main intention of the legislature in bringing the Workmen's Compensation Act and of the fact that the said proviso is withstood for several decades, I do not find any justification in the argument of the learned counsel for the petitioner with regard to his second submission, also. As already mentioned, the right of appeal has not been taken away by the legislature. After depositing the amount, it is always open to the aggrieved person, petitioner herein to file an appeal u/s 30(1) of the said Act and if he has a case, it is open to him to convince this Court and also prevent the workman or his legal heirs to withdraw the amount till the disposal of the appeal. When such provision is available in the Act, the condition that the amount has to be deposited prior to the filing of the appeal cannot said to be either erroneous or arbitrary or violative of Article 14 of the Constitution. On the other hand, considering the entire enactment which is intended to help the victims who suffers from injuries in the course of employment and to the legal heirs of the deceased workman, it is but proper the necessary safeguards have to be made in order to protect those persons. As rightly observed by K. Sukumaran, J., of Kerala High Court in the decision referred above, if such positions is not there, the appeal period could be used for dishonest manipulation by an unscrupulous employer.

10. Under these circumstances, none of the contentions of the learned counsel for the petitioner is acceptable and consequently the writ petition fails and the same is dismissed.