

(1965) 06 BOM CK 0001

In the Bombay High Court

Case No : A.F.O.D. No. 297 of 1964 with First Appeal No. 298 of 1964 & First Appeal No"s. 297 and 298 of 1964

Maharashtra Sugar Mills Ltd.

APPELLANT

Vs

Ashru Jaiwant Tribhuvan

RESPONDENT

Date of Decision : 16-06-1965

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 4

Citation : AIR 1966 Bom 240 : (1965) 67 BOMLR 893 : (1966) ILR (Bom) 610 : (1967) MhLj 220

Hon'ble Judges : Patel, J;Bal, J

Bench : Division Bench

Advocate : B.A. Pandhya, for the Appellant; D.S. Nargolkar, for the Respondent

Judgement

Patel, J.—These are two appeals under the Workman"s compensation Act by the employees.

[2] The point involved in of some importances, and that is why these matters were referred to a Bench. The facts in the first Appeal No, 297 of 1964 are that the respondents Ashru was employed by the Appellants Sugar Mills as a labourer. An accident occurred on 25th September 1962 in the course of the Respondents employment. As a result of this accident, the Respondents suffered a simple fracture of the right and left calcareous bones of the feet. This injury and even after recovery, made him practically unfit to do the work which he was accustomed to do. He, therefore made an application for compensation under the Workman"s compensation act in respect of this injury. The civil surgeon who examined him on the 8th May 1963 issued a certificate where he has described the injuries as simple fractures of right and left calcaneum, and Doctor gave evidence to suggest that the disability was a permanent partial disability only to the extent of 10 per cent. The learned commissioners held that the disability was 90 per cent and awarded compensation on that basis.

[3] The facts in First Appeal No. 298 of 1964 are that the respondents,

Sonawane, was employed by the Mills, also as labourer. The accident occurred on 5th November 1962. He suffered injuries in the course of the employment as a result of which both the middle and index as fingers of his left hand are rendered useless even though some stubs are left. The percentage of the disablement of is 18. The learned commissioners ordered compensation accordingly.

[4] In Both these case, in calculating the quantum of compensation, the learned commissioner which included in the wages of the workman the bonus which was earned in the prior year and bonus which was calculated the compensation in accordance"s with the figures arrived at by inclusion of he same. In the first case on this basis the learned commissioners awarded a sum of the Rs. 2, 585/- and in the second case he awarded a sum of Rs. 641.

[5] The first contention that is raised by Mr. Pandya is that the learned commissioners was in error when he included bonus in the wages while calculating the amount of the compensation to be paid to the workman. He relied upon sheodutt singh v. Alli Mohamed [1959] 63 C WN 207 in support of his contention. In this case the learned Judges held that as bonus is not deferred wages and the is a cash payment if the addition to wages as ruled by out supreme court it is not a part of the wage at all. He referred to the observation of the supreme court in Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur, and The Sree Meenakshi Mills, Ltd. Vs. Their Workmen, to which we will presently refer. It is sufficient at this stage of say that in these two cases of the claim for bonus was made under the Industrial Disputes, Act 1947 which by its very definition in S. 2 excludes bonus from the definition of wages.

[6] The question as to whether bonus should be included in the wages for this purpose depends essentially upon the definitions given in the workman"s compensation act itself. Section 4 provides the manner of the determining compensation payable to workman in the stated cases. Clause [a] deals with compensation payable in case of death and is fixed on the basis of monthly wages earned by workman. Clauses [b] relates to permanent total disablement by reason of the injury and this also is based on the money wages and it to do determined in accordance with the schedule given in the act. Clauses [c] deal with permanent partial disablement and prescribes as certain percentages in cases schedule as being the percentage of the loss of earning capacity caused by the disablement. The second part of that clauses relates to injuries not specified in the schedule I and again refers to the loss of earning capacity permanently causes by the injury. It is not doubt true that monthly wages have been referred to in clauses [a] and [b] but there is no doubt that what was intended to be laid down was the fixing to compensation on the basis of the earning or the loss of the earning the basis of the earning or the loss of the earning capacity, of the workman. It seems that this was the reason why the words "wages" has been defined in the manner in which it has been done by Section 2 clauses [m] it says:

"Wages" includes any privilege or benefit which is capable of being estimated in money, other than a traveling concession allowance or the value of any traveling

concession or a contribution paid by the provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment."

[7] The first thing that must be noticed in connection with this definition is that it does not actually purport to limit the meaning of the words "wages". It merely seeks to include what ordinarily may not be included in the concept of wages and leaves the meaning at large. What is included however, gives a clue to what was actually intended to be conveyed by the word "wages". It is true that in its ordinary significance, the words "Bonus" would merely mean a gratuitous payment made by the employers to his employee as a matter of pleasure. And, if that were so, it is possible to argue that the bonus that is paid to an employee by his employer ought not to be included in wages.

[8] In industrial employment, however, bonus can no longer be regarded as merely a gratuitous payment by the employer. In this connection we may refer to the decision of the supreme court in the case of *The Sree Meenakshi Mills, Ltd. Vs. Their Workmen*, , Supreme Court. Mr. Justice Gajendragadkar speaking for the court says:

"The true nature and character of the workmen 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 is it a matter of deferred wages. The term "Bonus" is applied to cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attachment and efficiency being attained."

The court then lays down certain formulae for calculation of bonus payable by the employers. The observation in this case would suggest that the claim for bonus is a matter of right of the workman, and it is not dependent upon the willingness, or otherwise of the employer to pay the same. If it is a matter of right then we do not see why it is not a "Benefit" within clause [m] of section 2 of the workman compensation act. While construing these words we must mind. Evidently, it was intended as provision for workman who suffered employment injurious of sentences if they could not make the same earnings as before or fell completely out of employment. Even if it was a matter of some doubt, we would have been bound to construe the words liberally in order to advance the purpose of the act. The word "benefit" must be construed to mean all such benefits as a workman is entitled to have as to rights.

[9] That "Bonus" can be included in wages is clearly demonstrated by the definition of "Wages" in clause [rr] of section 2 of the Industrial Disputes act, 1947. It defines "Wages" to mean all remuneration capable of being expressed in terms of money and included but doesn't include [a] any bonus [b] any contribution paid or payable by the employer or any pension or provident fund..... [c] any gratuity payable on the termination of his service. In the

scheme of theta act, the last three could not be included within the meaning of "wages". It only illustrates that the word "wages" can have a very wide significance and can include bonus;

[10] Mr. Pandya relied particularly on the observations in the above judgment to the effect that "Bonus" respondent the cash incentive conditional on certain standards of attendance and efficiency being attained. Mr. Pandya argued that after all it is contingent payment and therefore, never a certainly and cannot therefore be regarded as benefit available to the employee. He also contended that the payment of bonus must depends upon the profits made by the employers and it is possible that even if it can be regarded as "benefits" it yet estimated in money.

[11] In this connection, we must observe that bonus is paid in most cases to day on the collective efficiency of the employees as a whole, and it is not dependent upon the efficiency of the and individual employee. Even apart from this, and merely because to some extent, it may depend upon the efficiency of a particular employee and may also depends upon the employer and may also depend upon the employer making some profit, it is impossible to sustain the contention that it is not a benefit which is capable of being estimated in money. Even the future of earnings of an individual are difficult to being estimated of exactly because his being also able to work continuously would be matter or assumption. Section 5 of the Act has provided a method for the calculation of wages, and the principle would apply to the earning of bonus. It is well known that in the trades and industries over an above the fixed wages and en employees or agent is paid commission on sales and the employer cannot suggest that the commission is not part of the earning of the employees or agent.

[12] In this connection, Mr. Nargolkar referred us to a decision in *Skailes v. Blue Anchor Line Ltd* [1911] 1 KB 360, where the words "remuneration" used in section 13 of the workman's compensation act 1906, came to be construed. While answering the contention similar to the present on behalf of the employee in that cases cozens hardy M.R. said:

"I am unable to follow this. Nothing is more common than that remuneration should vary according as the gross taking or the net profits of a business do or not exceed a certain figure" Lord Justice Farwell observed:

"Agreed additional remuneration contingent on a quick passage or on a dividend exceeding 5 per cent would clearly fall within the words "remuneration" in act although the quickness or the increased dividend dependents on luck and were independent of the employee's own conduct."

[13] Mr. Pandya relied on a decision of this court in the *Godavari Sugar Mills v. Shakuntala* 49 Bom LR 791: AIR 1958 Bom 158, where he says that could held that bonus would nto be included within "Wages" The question that fell for included consideration in that case was whether dearness allowance formed part of wages for the purposes of computing compensation. The court observed:

"But, in our opinion, the dearness, allowance must clearly be included. It is in no sense a bonus, but it is something which attaches "continuously to the wages in order to enhance it so as to be on a more comparative basis with the cost of living".

The case was decided in 1947, and it is hardly likely that the words "bonus" has been used by the learned judges in the technical sense which he has now acquired. In any event, that question was not before the learned judges and therefore it cannot be treated as a decision on the point. On the other hand, in the decision in *Jivan Lal Kandas Vs. Ramtaji Bhaiji and Another*, and *Chitru Tanti Vs. Tata Iron and Steel Co. Ltd.*, the learned judges have taken the view that bonus paid to an employee must be regarded as wages. It is true that in both cases these cases there was an agreement to pay bonus, but inasmuch as the bonus is payable whether or not there is an agreement, its existence would not make any difference in principle.

[14] It was also argued that when the act of 1923 was framed, it is hardly likely having regard to the nature of the then concept of bonus to include bonus within the words "wages" and the court should not now construe the words in such a way as to include bonus. In the first place even assuming that the concept of bonus was what Mr. Pandya contends it was under the old civil law we are bound to give reasonable meaning to the words used in the statute and include within wages every benefit which is available to the workman to which he is entitled as a matter of right by reason of his employment. Having regard to the decision of the act. We are also not impressed by the arguments that if we include bonus in the wages payable to the workman, it may be that some workman may fall outside the category of workman payable to the workman, it may be that some workman may fall outside that compensation in the case of accidents and deaths, because the remuneration would be more than the defined limits. Some inconvenience of that may be caused in rare set of the circumstances cannot deter us from giving the section its proper meaning and the only meaning which is capable of being attached to it. In our view, therefore, the learned commissioners, was right in including bonus while computing the compensation payable to the workman.

[15] The second point arises only in first appeal No. 297 of 1964. Mr. Pandya contended that the civil surgeon had certified the disability as 10 per cent., and in his evidence in court he explained to mean 1- per cent for each cent, while the learned commissioners held that the disability was 90 per cent. It is argued that he was not justified in taking this view. It is not necessary to consider this contention in details. In the case of *Ahmed Abdul Vs. H.K. Sehgal*, , sitting singly, I had occasion to deal with a similar question. In that case authorities were considered and the following proposition was formulated by me:

[16] Having regard to the principles involved in the determination of the relevant questions under the Act, we have no doubt that the learned commissioners were justified in taking into account the nature of the injury suffered by the workman,

the nature of the work which he was doing before of doing after the injury, and then was determining to his disablement at 90 per cent.

[17] In the result both the appeals fail and are dismissed with costs.

[18] Appeals dismissed.