

(1969) 01 PAT CK 0020
In the Patna High Court
Case No : A.F.O.O. No. 336 of 1967

M.L. Burman and Another

APPELLANT

Vs

Shyamsunder Sinha

RESPONDENT

Date of Decision : 13-01-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Workmens Compensation Act, 1923 — Section 15, 30(1)

Citation : (1970) ACJ 415 : AIR 1969 Patna 366

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : J.C. Sinha and R.P. Katriar, for the Appellant; Chandra Bhusan Sahay, Jugeswar Prasad Sinha and Uma Shankar Singh, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, J.—This appeal has been filed by the employers of the respondent, u/s 30 of the Workmen's Compensation Act, 1923 (Act No. 8 of 1923), against an order directing them to pay Rs. 1680/- to the respondent as compensation, as claimed by him.

2. The case arose out of an accident by which the respondent was injured on the 29th July, 1963. According to the respondent's case, made out in his application filed under the Workmen's Compensation Act. while he had been deputed to acquire information of accidents in various departments and workshops, an iron rod had pierced his foot as a result of which he had been permanently partially disabled, causing loss of earning capacity to the extent of fifteen per cent.

According to the employers, the respondent was not a workman within the meaning of the Workmen's Compensation Act and, therefore, he was not entitled to compensation. The Sub-divisional Officer acting as an authority u/s 15 of the Act has come to the conclusion that the employee in question was a workman within the meaning of the Workmen's Compensation Act.

2A. Learned Counsel for the respondent has taken a preliminary objection, based on Section 30 of the Act, urging that as no substantial question of law is involved in the appeal, the appeal would not lie in view of the first proviso to Section 30(1) of the Act. It appears that the certificate required under the third proviso to Section 30(1) of the Act was given on affidavit in the application filed by the appellants under Order XLI Rule 5 of the Code of Civil Procedure. I do not think that the preliminary objection is valid. The nature of work done by the respondent is not disputed at this stage, but the conclusion of the Compensation Officer to the effect that the respondent was a workman within the meaning of the Act is challenged and the inference from the facts alleged and found must be taken to be a question of law.

An employee will be entitled to compensation, if under Schedule II (ii) of the Act it is held that he was employed "otherwise than in a clerical capacity", provided, of course, the other requirements of this clause are also fulfilled. The question raised between the parties to this dispute, as to whether the employee was engaged in a clerical capacity or not must be deemed to be a substantial question of law, as the conclusions on facts found will govern other employees also similarly situated. I would, therefore, hold that this appeal lies u/s 30(1)(a) of the Act.

3. The oral evidence adduced on behalf of the respondent may now be summarised.

He has examined himself as witness No. 1 and he has deposed that since 1946 he was a clerk in the Rohtas Industries Limited and he had been transferred to the Office of the Factory Manager and had been given factory duty also. He had been given a cycle for this purpose at the relevant time and he had met with the accident in question in the workshop while he was carrying some papers for reconciling accident cases. According to his next witness, named Ram Prasad Singh, the respondent worked in the Office but frequented the factories also in connection with the enquiries into accidents on behalf of the management. He had to go to the places of accidents also. According to a third witness, Rajendra Prasad, the respondent had been frequently sent in the Sugar Factory in connection with verification of accident reports. This witness had met with an accident roundabout 1961 and the respondent had gone for enquiry in his case. Substantially on this evidence, the respondent claimed that he had been employed otherwise than in a clerical capacity, although he called himself a clerk in the Rohtas Industries Limited. According to the witness examined on behalf of the employers, named Sri P. P. Jain, the respondent was in the Factory Manager's Office, working as a clerk. He maintained reports of accident etc. and his job was of a clerical nature. Upon this evidence, the employers resisted the respondent's claim of compensation under the Workmen's Compensation Act.

It will now be necessary to refer to the show cause petition filed by the employers, as certain details mentioned in paragraph 10 of that petition had been put to the respondent, specifically in cross-examination. Paragraph 10 of

the show cause petition runs thus :--

"10. That the O. P. deny and refute the claim of the applicant, amongst others, on the following grounds namely:-

- (a) The applicant was never a workman as defined and contemplated by the Act.
- (b) That the applicant was a clerk at the relevant time attached to the Office of the Factory Manager and he was performing purely clerical duties. No other work was assigned to him.
- (c) The applicant was not at all employed on any premises where manufacturing process etc., was carried on. He had no business or it was none of the part of his duty to visit any premises where manufacturing process etc., was carried on.
- (d) The petitioner by virtue of his employment in the Office of the Factory Manager had only the following duties to perform, namely :--
 - (i) The different Managers of the factories used to submit accident reports in the prescribed form to the Factory Manager and the applicant along with other clerks used to receive all such accident reports on behalf of Factory Manager. This was done in his office. He had not to go for this.
 - (ii) That thereafter It was his duty to make proper record of such reports and forward the same to the Inspector of Factories to E. S. I. Local Manager.
 - (iii) He used to arrange for meeting to be held in the office of the Factory Manager for deciding cases for payment of compensation, and to record the decisions taken in the meetings and get necessary orders communicated to different units as also to Controller of Accounts through the signature of the Factory Manager. These are all purely clerical duties."

In cross-examination the respondent said that he had read paragraph 10 of the show cause petition. The first item of Clause (d)(i) of that paragraph was correct except for the last line. He added that on oral instructions he had to go to the factories from time to time. He stated that Clause (d) (ii) and Clause (d) (iii) were correct. He added that in addition to those duties he had to go to the work-sites also. Further, in cross-examination the respondent stated that his designation was that of a clerk, but he insisted that he had to go to factory-sites even when he was so designated. In cross-examination he has clarified the additional work that he had to do, for which he had claimed that his job was not of a clerical nature, and according to him, he had to put up records of compensation before the Factory Manager, presumably after inspecting the sites of accident.

The situation of the Factory Manager's Office has been given by the respondent in cross-examination. It was situated in the general office outside the factories. Therefore, the substance of the evidence given by the respondent and his two witnesses is that the respondent was employed in the office as a clerk, but on instruction, he had also to go out to make enquiries about accidents for the

purpose of giving reports on those accidents. Apparently, for this purpose, he had been provided with a cycle at the relevant time. But, I do not think that only because the respondent had to go out to verify the accidents reported, before making his reports, it can be held that he had been employed otherwise than in a clerical capacity, even if the other clauses of Schedule II (ii) of the Act become applicable. It is difficult to hold that a person employed as a clerk will cease to be employed in a clerical capacity only because he has to go out to verify matters for doing his principal duty for which he is employed. Learned Counsel for the respondent has relied upon the evidence of his client where he has stated that he had been given factory duty also. But the respondent has not himself clarified what particular factory duty he had been given, except what can be gathered from his evidence read as a whole, and that is to the effect that he had to go to the work-sites. If this evidence is read with his admissions as to his nature of work, given in Paragraph 10 of the show cause petition filed by the employers, it is clear that the function of the respondent was to work in a clerical capacity. It is difficult to hold that only because the respondent had to go out to verify the accidents reported in order to put up records of compensation before the Factory Manager, he had ceased to be employed in a clerical capacity.

Learned counsel for the respondent has referred to Exhibit 6, a photostat copy of a letter referred to in the impugned order and has contended that as the respondent had to go out to verify the accidents reported to confirm them, he was not employed in a clerical capacity. The learned counsel has also referred to Exhibit 1, showing that the respondent had been given a cycle "for accident work". I do not think that these contentions are sufficient to prove that the respondent was not employed in a clerical capacity, so that he would be entitled to compensation under the Workmen's Compensation Act.

Learned counsel for the respondent also referred to Exhibit 9, mentioned in the impugned order, which indicates that, the Manager had passed an order for compensation to the respondent for this accident. Not much can be made of the entries, because the respondent was also described as a clerk in Exhibit 9. Whether the respondent was a clerk, working in a clerical capacity or not on the day on which this accident had occurred must be found on the evidence as to the nature of work that the respondent did, and in my opinion, it must be held that on the relevant date the respondent was employed by the appellants in a clerical capacity. In the impugned order it has wrongly been typed that the respondent was fit to resume his duties on the 13th August, 1967, whereas the accident had taken place on the 29th July, 1963. As a matter of fact, the respondent was declared fit to resume his duties on the 13th August, 1963. Although the respondent had met with an accident, which cannot be denied, it appears from an affidavit filed on behalf of the appellants that as long as the respondent was on leave due to the accident, he had been paid full salary.

It is stated, further, that the respondent is still in the employment of Rohtas Industries Limited. It is stated at the bar that the respondent is still being

employed at the same salary that he would have drawn if he had not met with this accident. There has not really been any loss of earning capacity so far as the respondent of this case is concerned. As a matter of fact, learned counsel for the appellants has stated that the employers would not be reluctant to award a reasonable compensation to the respondent if he applies to the employers for it. However, these matters must be left to the mutual understanding of the parties. But, this appeal must succeed on the finding that the respondent had been employed in a clerical capacity at the time at which he had met with the accident.

4. The appeal is, therefore, allowed. There will be no order for costs.