

(2011) 08 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 3031 of 2010

M/s. Usha Agro Industries Pvt. Ltd.

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(14), 53

Citation : (2012) 132 FLR 178

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard learned Counsel appearing on behalf of the parties.

The writ petition was filed challenging the order dated 19.8.2009 passed by the Workmen's Compensation Commissioner, Patna awarding compensation to the private respondent No. 3 under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") on account of an accident suffered on 1.8.1991 while discharging duties in the petitioner's establishment.

2. By the impugned order, the Workmen's Compensation Commissioner, while allowing the claim, has held that as the respondent No. 3 was not an insured person within the meaning of section 2(14) of the Employees State Insurance Act, 1948 (hereinafter referred to as the 1948 Act'), hence, the objection taken by the petitioner that the proceedings were not sustainable in view of the bar provided u/s 53 of the Act, was not sustainable. The said findings of the Workmen's Compensation Commissioner led to the filing of the writ petition.

3. The facts of the case in brief is that the respondent No. 3 workman had moved the Workman Compensation Commissioner, the authority prescribed under the Act for compensation by reason of an accident suffered while on duty under the petitioner giving rise to Case No. 26 of 2000 and in which an order awarding compensation was passed. The proceedings so initiated and the order passed

thereunder was questioned by the petitioner in C.W.J.C. No. 13071 of 2002, inter alia, on grounds that the Commissioner had passed the orders without determining whether or not the workman was an "insured person". The writ petition was allowed with directions to the prescribed authorities under the two enactments to take a final decision in the matter and the issue raised. The impugned order is a consequence thereof.

4. The only issue posed by the petitioner and requires determination by this Court, is whether or not the respondent No. 3 is an "insured person" under the 1948 Act, in terms of the definition provided u/s 2(14) of the said Act and if the issue "posed is answered in the positive then whether the proceedings under the Act and consequential proceedings initiated pursuant thereto have any legal sanction.

5. The matter was heard on 30.4.2010 and time was granted to the respondents including the private respondents to file their respective affidavits. The Bench taking notice of the certificate proceedings initiated for recovery of the amount of compensation was pleased to order for the impleadment of the District Certificate officer-cum District Panchayati Raj Officer, Patna as party respondent to the proceedings and was further pleased to stay the proceedings arising from Certificate Case No. 127 of 2005-06, initiated for recovery of the amount of compensation awarded by the prescribed authority.

6. While the matter was pending disposal before this Court, a supplementary counter-affidavit was filed by the Employees State Insurance Corporation (hereinafter referred to the "Corporation") in the backdrop of the issue framed by this Court in the order dated 21.4.2011. The respondent Corporation upon consideration of the facts, accepted that the respondent No. 3 was an "insured person" in terms of section 2(14) of the 1948 Act and thus, accepted the liability to pay the compensation under the provisions of the said Act.

7. Considering the admission of the Corporation itself in the supplementary counter-affidavit that the respondent No. 3 was an "insured person" under the "1948 Act" and thus the liability is on the Corporation to pay the compensation on the basis of an assessment made by the Medical Board of the Hospital of the Corporation as regarding the extent of injury suffered by the workman, this Court, while recording the orders on 23.6.2011, observed that the issue raised by the petitioner practically stood concluded.

8. In the aforesaid circumstances, although the writ petition could have been disposed of on that date itself, but considering the lapse of time and the plight of the workmen who had yet to be paid his compensation for an injury suffered almost twenty years ago, this Court directed the Corporation to take appropriate steps in furtherance of their admissions that the petitioner was an "insured person" and calculate the compensation to which he was entitled after getting the respondent No. 3 medically examined by the Medical Board of the Hospital under the 1948 Act.

9. Under the orders of this Court, a Medical Board was constituted and the respondent No. 3 has presented himself for examination before the Board on 19.8.2011 headed by the Medical Superintendent of the Employees State Insurance Hospital, Phulwari Sharif, Patna.

10. Although the recommendation of the Medical Board has been brought on the records of the proceedings through an affidavit filed on behalf of the respondent Corporation, but as the recommendation was not as clear, this Court directed the Corporation to produce the relevant file relating to the medical examination of the respondent No. 3 and the findings of the Medical Board thereon.

11. Pursuant to the order of this Court, Mr. Anshuman, learned Counsel appearing for the Corporation, has produced the file relating to the assessment made by the Medical Board of the Hospital. The Medical Board, upon carrying out an exhaustive medical examination of the respondent No. 3, has assessed permanent disablement to the extent of 2.5% loss of earning capacity. The findings of the Medical Board is in a statutory form.

12. Following the recommendation of the Medical Board, an assessment has been made by the Corporation determining the compensation amount of `4311/-which is payable to the respondent No. 3 by virtue of the permanent disablement to the extent of 2.5% suffered by him.

13. Mr. Anshuman, submits that a cheque in this regard has already been forwarded to the respondent No. 3. With the payment of compensation under the provisions of the 1948 Act, the Corporation purports to have discharged its liability. Whether or not the determination of the compensation amount is correct, reasonable and in accordance with the provisions of the 1948 Act, is not a subject-matter of the present proceedings and this Court would not express any opinion thereon. The respondent No. 3, if aggrieved and if so advised, may challenge the same, by filing an appropriate application before an appropriate forum.

14. Having heard learned Counsel for the parties and considering the circumstances aforesaid, the order dated 19.10.2009 passed by the Workmen's Compensation Commissioner in Case No. 26 of 2000 is quashed and set aside.

15. As a consequence, the certificate case initiated for recovery of the compensation amount pursuant to orders passed in the Workman Compensation Case No. 26 of 2000 by the Workmen's Compensation Commissioner giving rise to Certificate Case No. 127 of 2005-06 and pending before the District Certificate Officer-cum-District Panchayati Raj Officer, Patna also cannot be sustained and is accordingly quashed and set aside. Learned Counsel for the petitioner submits that the Certificate Officer under duress has recovered an amount of `33000/- from the petitioner. If that be so, the amount so recovered under the certificate proceedings, shall be remitted to the petitioner establishment.

16. The writ petition is allowed.

17. Let the records of the Medical Board proceedings, produced today be returned to Mr. Anshuman, learned Counsel for the Corporation with a further direction to the Corporation to provide the opinion of the Medical Board and other concerned papers relatable to the Medical Board proceedings, to the Workman, on request being made in this regard.