

(2017) 04 AHC CK 0157
In the Allahabad High Court
Case No : 993 of 2013

National Insurance Co. Ltd. Thru. The Manager	APPELLANT
Vs	
Smt. Ram Dulari & 2 Others	RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 14 Rule 1](#) -
[Workmens Compensation Act, 1923](#), [Section 3](#), [Section 4](#), [Section 30](#) -
Employers liability for compensation - Amount of compensation - Appeals
[Evidence Act, 1872](#), [Section 101](#) -
Workmens Compensation Rules, 1924, — Rule 41, Rule 32, Rule 28

Citation : (2017) 04 AHC CK 0157

Hon'ble Judges : Attau Rahman Masoodi

Bench : Single Bench

Advocate : Prabhakar Trivedi, Abhishek Mishra, Arvind Kumar Shukla, Suresh Panjwani

Judgement

1. Heard Sri Prabhakar Trivedi, learned counsel for the appellant and Sri Arvind Kumar Shukla, learned counsel for respondent no. 2.

2. This appeal filed by the insurance company under Section 30 of Workmen Compensation Act, 1923 has questioned the legality and correctness of judgement dated 30.08.2013 passed by the Commissioner, Workmen Compensation, whereby a compensation of Rs. 3,22,920.00/- alongwith 8% simple interest has been awarded in favour of the claimants. Respondent nos. 1 has died during pendency of this appeal, leaving behind respondent no. 2 as the sole claimant.

3. Sri Prabhakar Trivedi, learned counsel for the appellant has primarily argued this appeal on the ground that Rule 28 of the Workmen Compensation Rules envisages a mandatory duty upon the Workmen Compensation Commissioner to adjudicate the claims by framing and recording the issues upon which the

decision of the case is rendered but in the present case the Commissioner having failed to do so has committed a breach of the mandatory requirement of law which renders the impugned judgment as bad in the eye of law.

4. Rules 28 of Workman Rules 1924 is precisely the premise upon which the argument advanced by learned counsel for the appellant rests, therefore, the relevant rule is reproduced hereunder for ready reference:- "28. Framing of issues. -- (1) After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(2) In recording the issues, the Commissioner shall distinguish between those issues which in his opinion concern points of facts and those which concern points of law."

5. Learned counsel for the appellant has laid stress on the term "shall" used in the aforesaid rule and has thus argued that the language of the statutory rule casts a mandatory obligation on the Workmen Commissioner to frame the issues so that evidence is led by the parties for adjudication of claim in an effective and impartial manner.

6. The ground urged before this Court can be looked at from two angles. Firstly, as to whether the statutory rule casts a mandatory duty upon the Workmen Commissioner to frame the issues, breach whereof would vitiate the judgment rendered and secondly, as to whether the ground urged before this Court with respect to failure of framing issues, unless it results into a prejudice would be inconsequential and thus such a ground even if it is assumed that duty is cast under the rule, the judgment would nevertheless stand and infirmity attached to the same, as argued, would become of no legal consequence.

7. Learned counsel for the appellant while construing Rule 28 has also invited attention of this Court to Rule 32 and on the basis of a conjoint reading of these two rules, it was argued that framing of issues between the parties is a condition precedent for rendering a judgment on a civil dispute though the proceedings may be summary in nature under the Workmen Compensation Act, 1923.

8. It may be noted that the Code of Civil Procedure has a restricted application in terms of Rule 41 of the Workmen Compensation Rules but the underlying principles can be taken aid of, insofar as the requirement of framing of issues in the disputes of civil nature is concerned. Order XIV Rule 1 provides us some guidance. It is manifest from Order XIV Rule 1 that an issue is framed having regard to the pleadings which are relied upon as facts by one party and the other party denies the same.

9. This is a guiding principle for framing issues between the parties. The facts at hand have posed a different difficulty. In the instant case the claimant

consequent upon the death of deceased Babloo Lodhi filed a claim petition under Section 3/4 Workmen Compensation Act, 1923. There is no dispute between the employer and employee that the death of Babloo Lodhi (deceased) occurred on 29.09.2006 during the course of employment.

10. The version of the claimants that deceased Babloo Lodhi was an employee of respondent no.3 was not disputed by the employer but what was disputed in the written statement filed by respondent no. 3 as an employer was the rate of monthly wages. As per the claim set out in the claim petition, the monthly emoluments which the deceased was receiving were stated at the rate of Rs. 4000/- per month whereas the employer, in his written statement, admitted the monthly wages at Rs. 3000/- per month. The employer and employee relationship was, however, not disputed.

11. At the initial stage, the Insurance Company was not impleaded as opposite party but once in the written statement filed by respondent no. 3, it came out that the vehicle causing accident was insured, the Insurance Company i.e. appellant came to be impleaded as a respondent in the proceedings. The appellant (insurer) having come to be impleaded as a defendant in the proceedings, also filed a written statement before the Workmen Commissioner.

12. In the written statement filed by the appellant (insurer), a categorical stand was taken disputing deceased Babloo Lodhi to be an employee of respondent no.3. The denial of employment was a simple denial but was not backed by any evidence whatsoever. The disputing position thus arose between the version set out in the claim petition admitted by respondent no.3 (employer) on the one hand and denial of this fact by the insurer on the other hand.

13. It is in this background of the case that the appellant has urged the ground of framing of issues in the backdrop of Rule 28 read with Rule 32 of the Workmen Rules, 1924.

14. It may be pertinent to put on record that Section 101 of Evidence Act casts burden of proof upon a party which asserts a fact and burden lies on the asserting party to prove such a fact. In the present case the claimant's version set out in the claim petition was admitted by respondent no. 3 leaving no scope for any issue to be framed between the claimant and the employer.

15. That being the position, the question that crops up is as to what procedure would a Workmen Commissioner adopt in a situation where master and servant relationship is admitted by the employer, but the admission once believed to be true shifts the financial liability upon the appellant (insurer) due to the vehicle being insured. The conflict has arisen between the version set out by the insurer on the one hand and the respondent no.3 (employer) on the other hand and both the parties were defendants in the claim petition.

16. The statutory rules do not provide a clear guidance as to how such a situation is to be dealt with but the fact remains that the statement of facts set

out in the two rival written statements are a part of the pleadings as per CPC. The question of fixation of financial liability is an important dimension of dispute that arises in such claims, therefore, observance of a fair opportunity by the Tribunal facilitating the parties to place their stand being fundamental to such proceedings, cannot be brushed aside.

17. The submission advanced by learned counsel for the appellant that issues in such a situation ought to have been framed by the Tribunal does not appear to be wholly irrelevant but looking to the nature of proceedings being summary and the decisions rendered on this aspect of the matter, it is gathered that failure to frame issues in summary proceedings by the Workmen Compensation Commissioner would ipso facto not render the judgment bad in the eye of law, but at the same time a party complaining of prejudice must have a fair opportunity of defending his case.

18. It is in this context that this court went deeper into the record and it was found that except a mere denial on the part of the appellant, there is neither any evidence filed by the insurer-appellant to disprove the stand nor the appellant has chosen to cross-examine the employer so as to derive anything supportive of the stand adopted by him. The proceedings before the Workmen Compensation Commissioner may be summary in nature but recording of evidence as per the rules prescribed cannot be given a go-by. The claimant in order to establish the accident has led evidence. The claimant's version that deceased was an employee of respondent no. 3 was admitted by the employer. In such a situation the opportunity to cross-examine the employer was available to the appellant but such an opportunity was not availed of. Once the appellant failed to avail the opportunity of cross examination of the employer, it is not open to the appellant at this stage to say that such a judgment for want of framing of an issue would be a nullity in the eye of law and that too when there is no evidence contrary to what has been opined.

19. This Court having regard to the judgment rendered by Orissa High Court in the case of New India Assurance Company Ltd. Vs. Braja Kishor & another reported in 1992 ACJ (Ori.) 715, though respectfully agrees with the view taken by the Division Bench but suffice it to say that in a conflicting situation, the adjudicating forums may equally adopt a procedure in consonance with the statutory rules so that the rule of audi alteram partem is observed to its fullest extent but what follows is that the opportunity of cross examination is necessarily available to an affected party where the written statements give rise to a conflict.

20. Needless to mention that framing of issues vitally aids the parties to lead evidence and this practice should be observed in the normal course so as to leave no scope for prejudice which the parties may complain of at a later stage. In the present case since the appellant has failed to make out a case of any prejudice being caused to him for want of framing issues and no material has gone unnoticed, therefore, the impugned judgement does not warrant any

interference by this Court and the appeal thus being bereft of any merit deserves to be rejected.

21. Lastly the appellant argued that the employer had advanced a sum of Rs. 15000/- towards compensation to the legal heirs/representatives of the deceased. This in itself fortifies the admission of employer to establish the relationship and such a payment does not have any mitigating effect under any provision of the Act on the quantum of compensation awarded to the claimants.

22. The appeal is accordingly dismissed. No order as to cost.