
(2014) 10 KL CK 0087

In the High Court Of Kerala

Case No : Miscellaneous First Appeal (WCC) No. 124 of 2011 and 66 of 2013

New India Assurance Co. Ltd.

APPELLANT

Vs

Balachandran

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Workmens Compensation Act, 1923 — Section 4, 4(1), 4(1)(a), 4(1)(b), 4(1)(c)

Citation : (2015) 1 ACC 102 : (2015) ACJ 12 : (2015) 144 FLR 794 : (2015) 1 ILR 1 : (2014) 4 KHC 409 : (2014) 4 KLJ 633 : (2014) 4 KLT 499 : (2015) LabIC 24 : (2015) 1 LLJ 762 : (2014) 4 LLN 663 : (2015) 2 RCR(Civil) 623 : (2015) 2 SCT 471

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J;A.K. Jayasankaran Nambiar, J

Bench : Full Bench

Advocate : Rajan P. Kaliyath, Advocate for the Appellant; A.V.M. Salahudin, K. Anand and Latha Krishnan, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. A Division Bench of this Court has made a reference of these appeals for consideration of a larger Bench visits orders dated 23.8.2013 in M.F.A. No. 124 of 2011 and dated 10.9.2013 in M.F.A. No. 66 of 2013. The Division Bench was considering a claim regarding compensation which has been determined under S. 4(1)(c)(ii) of the Workmen's Compensation Act, 1923. In M.F.A. No. 124 of 2011, wages of the workman was Rs. 5,400/- per month. The issue before the Division Bench was as to whether while computing the monthly wages, the limit as prescribed in Explanation to Sections 4(1)(a) and (b) applies in case when compensation is determined with regard to clause (c). An earlier Division Bench judgment reported in *United India Insurance Co. Ltd. v. Abdul Razak* (2012) 1 KLT 818 was cited before the Division Bench wherein the Division Bench had taken a view that for determination of the amount of compensation under S. 4(1)(c), the Explanation II to S. 4(1)(a) and (b) shall not be applicable. In the present appeals, the Division Bench herein had expressed a doubt about the

correctness of the judgment in United India Insurance (supra) and had made a reference for consideration by the Full Bench. The Division Bench expressed its views in paragraph 6 of the reference order that even though clause (c) is not expressly mentioned in Explanation II, since clause (c) contemplated compensation payable which, in turn, is to be determined with reference to compensation under Clause 4(1)(b), the Legislature has left out reference to Clause (c) in Explanation II and hence explanation II is applicable for determination of the amount of compensation under S. 4(1)(c). Paragraph 6 of the reference order is extracted below:

"We are also of the view that we may not be justified in subscribing to the view expressed by the Division Bench. We are of the view that there is considerable substance in the argument of the learned counsel for the appellant that even though Clause (c) is not expressly mentioned in explanation II, in view of the fact that clause (c) contemplates compensation payable which in turn is to be determined with reference to compensation under clause 4(1)(b), the Legislature has left out reference to clause (c) in Explanation II and any other interpretation is likely to result in an anomalous situation as for a person who suffered total disablement, the wages would be at the maximum of Rs. 4,000/-, while if it is a case of permanent partial disablement the person would get compensation but with reference to higher monthly wages. This we would think is not the intention of the Legislature. In said circumstances, as we are in disagreement with the view expressed by the Division Bench, we would think that the matter has to be decided by a Larger Bench."

2. Learned counsel appearing for the appellant in both appeals have submitted that the view which has been expressed in the reference order is the correct view of law. It is submitted that S. 4(1)(b) provides for amount of compensation in case of permanent total disablement resulting from injury and clause (c) provides for permanent partial disablement from injury and under clause (c) some percentage of compensation is payable in the case of partial disablement as that of permanent total disablement as referred to in clause (b). Hence explanation has to be read into while making such computation. It is submitted that in the earlier Division Bench judgment in United India Insurance (supra,) it has been submitted that clause (c) does not refer to Explanation II and Explanation II shall not be applicable in determining the compensation under clause (c) of sub-section (1) of S. 4. It is further submitted that the explanation cannot enlarge or restrict the substantive provision given in S. 4. Hence the explanation cannot be read in a manner to restrict the right given in the substantive provision. It is further submitted that *casus omissus* cannot be supplied by the Court, which is the well established principle of statutory interpretation. It is further submitted that S. 4 has suffered various amendments from time to time and with effect from 18.1.2010 explanation II is consciously deleted and hence the intention of Legislature in carrying out the said amendment is also to be taken into consideration.

3. We have considered the submission of the learned counsel for the parties and perused the records. S. 4 in the Workmen's Compensation Act, 1923 which falls for consideration in the present case reads as follows:

[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 from the injury an amount equal to [fifty per cent] of the monthly wages of the deceased workman multiplied by the relevant factor;

or an amount of [eighty thousand rupees], whichever is more

(b) Where permanent total disablement result from the injury an amount equal to [sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor;

or

an amount of [ninety thousand rupees], whichever is more;

Explanation I. For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II. Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be [four thousand rupees] only;

(c) Where permanent partial disablement result from the injury (i) in the case of an injury specified in Part II of Schedule I", such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.-Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries;

Explanation II.-In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) Where temporary disablement, whether total or partial results from the injury

a half-monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

[(1-A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.];

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day--

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that--

(a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation.--Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.]

[(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the

person who actually incurred such expenditure.]"

4. As it is clear from the very heading of S. 4 that the Section relates to "amount of compensation". S. 4(1) categorised four categories namely (a), (b), (c) and (d). S. 4(1)(a) relates to death resulting from injury which is not the case in hand. It is not disputed by any of the parties that cases in both the aforesaid appeals relate to S. 4(1)(c) where permanent partial disablement has occurred on account of injury. The question which has fallen for consideration before this Bench is as to whether explanation II which finds place after clauses (a) and (b) should also be read in computing the amount of compensation under clause (c) whereas there is no express mention of clause (b) while computing the compensation under clause (c).

5. Clause (b) relates to amount of compensation in case of "permanent total disablement resulting from the injury". The amount provided is an amount equal to 60% of the monthly wages. Explanation II which has been put after clauses (a) and (b) is that where the monthly wages of a workmen exceeds Rs. 4,000/- his monthly wages for the purpose of clauses (a) and (b) shall be deemed to be Rs. 4,000/- only. The above explanation has been put both for clauses (a) and (b) which has been expressly mentioned in the explanation. It is relevant to note that clause (b) provides for compensation in the case of permanent total disablement. Clause (c) is the case where permanent partial disablement is there on account of injury. According to Clause (c)(ii) which is applicable in both these cases, the computation has to be made according to the percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity. When compensation is to be computed as per the compensation payable in the case of permanent total disablement we fail to see why Explanation II which has been appended after clause (b) shall not be attracted. It is not fair to see that compensation in the case of permanent total disablement has to be higher as compared to partial disablement. In the event it is accepted that Explanation II is not applicable in the computation in Clause (c), there may be a case where the amount for partial disablement may be more than that of permanent total disablement which cannot be the intention of the Legislature. When reference is made to clause (b) for computing the compensation, the mechanism which has been provided in clause (b) shall ipso facto apply to clause (c). It was not necessary for Legislature to have expressly referred to in clause (c) since even in clause (c) there is no reference of clause (b) and only reference is of percentage of the compensation payable in the case of permanent total disablement which obviously refers to clause (b). Can it be argued that non-reference of clause (b) does not entitle computation of clause (b)? The answer shall obviously be "no". When Clause (b) is applicable in computation, Explanation itself, which is part and parcel of clause (b) has to be made applicable.

6. The learned counsel for the claimant has submitted that the Explanation cannot be read in any manner as to enlarge or limit the main substantive

provision. He has referred to the judgment of the Supreme Court *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, have been expressly referred to which has the following effect.

"45. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of willful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in "Interpretation of Statutes" while dwelling on the various aspect of an Explanation observes as follows:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute (P. 329).

49. In *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, this Court observed thus:

"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

7. There cannot be any dispute to the proposition as laid down by the Apex Court. The explanation is added to explain a legislative enactment or a statutory provision. The explanation is part of the Statute and by explanation the term monthly wages have been explained. We do not see any substance in the submission that the explanation enlarges or restricts the substantive provision. We do not find any such flaw in the explanation so as to limit its applicability. More so, present is a case where the submission is that Explanation II is not applicable in computation under clause (c) and it is applicable only for clause (b).

8. The next submission made by the learned counsel for the claimant is that there is a *casus omissus* which cannot be supplied by the Court which is an accepted principle of a statutory interpretation. The judgment relied by the learned counsel for the claimant has been reported in *Commissioner of Income Tax, Central, Calcutta Vs. National Taj Traders*, wherein the Apex Court has laid down the following in paragraph 10.

9. Two principles of construction—one relating to *casus omissus* and the other in regard to reading the statute as a whole appear to be well settled. In regard to the former the following statement of law appears in *Maxwell on Interpretation of Statutes* (12th Ed.) at page 33:

"Omissions not to be inferred—"It is a corollary to the general rule of literal

construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. Lord Morsay said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". "We are not entitled", said Lord Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."

In regard to the latter principle the following statement of law appears in Maxwell at page 47:

A statute is to be read as a whole—"It was resolved in the case of Lincoln College's case (1595) 3 Co Rep 58b, at page 59b that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one part only by itself". Every clause of a statute is to "be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole Statute." (Per Lord Davey in *Canada Sugar Refining Co. Ltd. v. R.* 1898 AC 735 (Canada))."

In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts L.J. in *Artemiou v. Procopiou* ((1966) 1 QB 878), "is not to be imputed to a Statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction, (Per Lord Reid in *Luke v. I.R.C.*, 1963 AC 557 where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges". In the light of these principles we will have to construe sub-s.(2)(b) with reference to the context and other clauses of S. 33B.

There cannot be any dispute to the proposition as laid down by the Apex Court in the above case in which there is a *casus omissus* supplied by the Court. Clause (c)(i) applies to computation of compensation with regard to permanent total disablement as referred to in S. 4(1)(b). Hence there is no case of *casus omissus* so as to add any word in the Statute by the court. It has lastly been submitted

that the Explanation II has suffered several amendment in the Act and ultimately with effect from 18.1.2010 it has been deleted. Explanation II is relevant for the present case since at the relevant time the provision was in the statute book. The fact that it has been deleted may be relevant for subsequent cases but that has no relevance for determining the issues which have arisen in the present case. The Division Bench in United India Insurance (supra) had held that since there is no mention of Explanation II in clause (c), it will not fall in S. 4(1)(b). We are of the view that the views expressed by the Division Bench in United India Insurance (supra) does not lay down the correct law. The view expressed by the Division Bench in the reference order is to be approved.

In the result, we answer the reference holding that the Division Bench judgment in United India Insurance (supra) does not lay down the correct law and is hence overruled. The views expressed by the Division Bench in the reference order is approved. Let the appeals be listed before the appropriate Bench with our answers.