

(2015) 06 BOM CK 0064
In the Bombay High Court
Case No : First Appeal No. 106 of 1997

Oriental Insurance Company Limited	Vs	APPELLANT
Mayawati and Others		RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 4, 4A, 4-A

Citation : (2015) 06 BOM CK 0064

Hon'ble Judges : P.B. Varale, J

Bench : Single Bench

Advocate : D.N. Kukday, for the Appellant; Apoorva Dey, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Varale, J.—By way of present appeal, the appellant - Oriental Insurance Company Limited, challenges the judgment and order dated 26th December, 1996 in the matter of application under Section 4 read with Section 22 of Workmen"s Compensation Act, 1923 passed by the learned Commissioner, Under Workmen"s Compensation Act.

2. The brief facts, which give rise to filing of the present appeal, can be summarized as under:--

"One Manojkumar Gorakhnath Manwatkar, a tanker driver engaged by M/s. S.J. Carriers for driving tanker, on 10th June, 1995, was proceeding to Akola from Amravati on instructions from the employer. When the vehicle tanker reached near the farm of one Sharyan Jaiswal at Pala Village at about 12:00 noon, a truck bearing registration No. MH-31/ 5169 was coming from opposite direction and another tanker bearing registration No. MH-31/6991 owned by the same employer M/s. S.J. Carriers was following the tanker bearing registration No. MH-31/4811 being driven by Manojkumar. A truck bearing registration No. MH-31/ 5169 gave dash to tanker bearing registration No. MH-31/4811. At the

same time, the following tanker also gave dash to the tanker No. MH-31/ 4811 from behind. A driver Manojkumar was severely injured and caused multiple fractures and fatal injuries. Though Manojkumar was admitted in Irvin Hospital, Amravati, the medical treatment could not survive Manojkumar and he breathed his last on 10.06.1995 at about 05:45 p.m."

An application under Section 4 read with Section 22 of Workmen's Compensation Act, 1923 was filed before the Commissioner under the Workmen's Compensation Act at Nagpur at the instance of Smt. Mayawati, the widow of deceased Manojkumar, Masters Vikey and Deepak, the sons of deceased Manojkumar and Hemant, the younger brother of deceased Manojkumar. It was submitted in the application that deceased Manojkumar was in the employment of non-applicant No. 1 M/s. S.J. Carriers as a tanker driver and was receiving salary at the rate of Rs. 2,000/- per month including bhatta etc. The non-applicant No. 1-M/s. S.J. Carriers, the owner of the tanker as well as employer of the deceased and non-applicant No. 2-Oriental Insurance Company to whom the vehicle was insured and the insurance policy was valid when the accident took place, were party to the application. It was submitted in the application that though the applicants approached the non-applicant No. 1 for payment of compensation, the non-applicant No. 1 avoided to pay any compensation. As such, a notice was issued through the lawyer and as there was no reply, the applicants submitted an application seeking compensation of Rs. 1,69,432/- along with the interest, penalty and other reliefs in the nature of funeral expenses and costs. The application was resisted by the present appellant-Oriental Insurance Company i.e. non-applicant No. 2.

It was submitted in the written statement that the contentions in regard to the relationship between the deceased and non-applicant No. 1 and the other contentions in respect of the employment and the treatment at Irving Hospital are denied for want of knowledge. It was not disputed in the reply that the vehicle tanker was insured with the non-applicant No. 2-Oriental Insurance Company on the date of alleged incident. It was further submitted that the appellant (non-applicant No. 2) subject to the cogent proof of date of birth of deceased Manojkumar was willing to settle the claim under Section 4 of the Workmen's Compensation Act by paying requisite compensation. The liability of penalty and interest under Section 4-A of the Workmen's Compensation Act of 1923 jointly and severally with non-applicant No. 1 was specifically denied and it was submitted that it was the sole liability of non-applicant No. 1. It was further submitted in the reply that the deceased was getting gross salary at the rate of Rs. 950/- per month and not at the rate of Rs. 2,000/- as averred in the application. The appellant (non-applicant No. 2) also submitted that the claim was filed at Nagpur and as the accident in question caused within the jurisdiction of Amravati district, the learned Commissioner at Nagpur would have no jurisdiction to decide the proceedings unless and until they are formally transferred to Nagpur. The learned Commissioner, vide judgment and order dated 26.12.1996, allowed the application and directed the appellant and non-applicant

No. 1 to deposit the amount of Rs. 2,11,790/- as a compensation with further direction to non-applicant No. 1 to pay interest.

3. Shri Kukday, the learned Counsel appearing on behalf of the appellant-Oriental Insurance Company vehemently submitted that the order passed by the learned Commissioner is unsustainable on more than one grounds. Shri Kukday, the learned Counsel advanced his submission based on three grounds. His first submission was that the learned Commissioner allowed the application filed by the applicants seeking amendment thereby enhancing the claim from Rs. 1,69,432/- to Rs. 2,11,790/- without giving any opportunity of hearing to the appellant. He further submitted that the application for amendment itself was filed after hearing respondent Nos. 1 to 4 and the matter was fixed for arguments. The second ground of the learned Counsel for the appellant was that as no opportunity for consequential amendment was allowed to the appellant, the learned Commissioner allowed the claim in view of the amendment in the Act effective from 15.09.1995. the submission of Shri Kukday was that the learned Commissioner ought not to have granted benefit of the amendment and the claim ought to have considered the position as it stood on the day of the accident i.e. 10.06.1995. In short, it was the submission of Shri Kukday that the learned Commissioner grossly erred in giving retrospective effect to the amendment and exceeded its jurisdiction which is impermissible under law. The third submission of Shri Kukday, the learned Counsel for the appellant was that the learned Commissioner also failed to appreciate the material placed on record and the grounds raised by the appellant in their proper perspective and on assumptions and presumptions the Commissioner passed the order. Though Shri Kukday, the learned Counsel for the appellant did not seriously press his submission, it was also the submission of the learned Counsel that prior to amendment, explanation-2 to Section 4 of the Act, the bar was operating in respect of the monthly wages of the workmen and prior to the amendment of 15.09.1995, the specified wages was one thousand rupees in explanation-2 to Section 4.

4. Per contra, Shri Dey, the learned Counsel appearing on behalf of the respondents supported the order of the learned Commissioner. It was the submission of Shri Dey that the Workmen's Compensation Act being the beneficial legislation, the claimants are entitled to the benefits under the Act and the technicalities should not cause hindrance for the benefits to the workmen/employees. He submitted that though it is the primary responsibility of the employer as the employer paid no heed to the demand of the applicants, the vehicle which was insured with the appellant (non-applicant No. 2) and the policy was valid on the date of accident, the burden of payment of compensation shifted upon non-applicant No. 1. Shri Kukday, the learned Counsel for the appellant, in support of his submission, placed reliance on the judgment of the Apex Court in the case of Kerala State Electricity Board and Another Vs. Valsala K and Another, (1999) 2 ACC 656 : (2000) ACJ 5 : AIR 1999 SC 3502 : (2000) 1 CTC 563 : (1999) 7 JT 292 : (1999) 2 LLJ 1112 : (1999) 6 SCALE 31 : (1999) 8 SCC 254 : (2000) SCC(L&S) 50 : (1999) 2 SCR 657 Supp : (1999) AIRSCW

5. With the assistance of the learned Counsel appearing on behalf of the respective parties, I have gone through the record placed before this Court. On perusal of the record, it reveals that the applicants claimed the compensation of Rs. 1,69,432/-. It was submitted that the deceased was young boy, hale and hearty and he could have survived up to 70 years of age. It was further submitted that the deceased was drawing the salary at the rate of Rs. 2,000/- per month. Perusal of the record shows that the applicants placed on record certain documents namely the copy of First Information Report, copy of death certificate issued by the Medical Officer, the copies of school leaving certificates and copy of insurance policy. Perusal of the written statement filed on behalf of the appellant shows that the appellant expressed its willingness to settle the claim under Section 4 of the Workmen's Compensation Act and denied the liability of penalty and interest under Section 4-A of the Act. It was the stand of the appellant that the deceased was getting gross monthly salary of Rs. 950/- and not Rs. 2,000/- as claimed. The appellant also raised a ground of jurisdiction. Perusal of the record further shows that the application for amendment was allowed without giving any opportunity to the appellant to contest enhanced claim on the backdrop of the amendment. It again shows that the applicant No. 1, in her cross-examination, admitted that the document (Exh.35) placed on record is the certificate about the salary of deceased Manojkumar given to the insurance company. On admitting Exh.35, she further stated that it is not correct to say that her husband was getting Rs. 950/- per month as a salary which was mentioned in Exh.35. Perusal of document (Exh.35) shows that the particulars were submitted to the appellant-Insurance Company in respect of the claim referring to the employer and it was submitted that from January, 1995 till June, 1995, the deceased was receiving salary at the rate of Rs. 950/- per month.

6. On the backdrop of these facts, the observation of the learned Commissioner that no document was filed on record to show that the deceased was getting salary at the rate of Rs. 950/- per month, is not in consonance with the record. In the written statement filed by the appellant, it was the specific stand of the appellant that the deceased was willing to settle the claim by treating the monthly wages of the deceased at the rate of Rs. 950/- per month and by multiplying 40 per cent of the same with the relevant factor prescribed under the law, as per his age (subject to proof). The learned Commissioner observed that the deceased was aged about 28 years at the time of his death and for the purposes of calculation of compensation, the salary of deceased Manojkumar is treated as Rs. 2,000/- only in view of the amended provisions of Section 4-A of Workmen's Compensation Act. The amendment came into effect on 15.09.1995. Therefore, the amendment is applicable to this case.

7. Shri Kukday, the learned Counsel for the appellant was justified in submitting that the observations of the Commissioner are unsustainable in view of the

judgment of the Apex Court in the matter of Kerala State Electricity Board and another v. Valsala K and another (cited supra). It will be useful for our purpose to refer to the relevant observations. The Apex Court observed thus :--

"1. The neat question involved in these special leave petitions is whether, the amendment of Sections 4 and 4A of the Workmen's Compensation Act, 1923, made by Act No. 30 of 1995 with effect from 15.09.1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15.09.1995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four-Judge Bench of this Court in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, (1976) ACJ 141 : AIR 1976 SC 222 : (1976) LabIC 222 : (1976) 1 LLJ 235 : (1976) 1 SCC 289 : (1976) 2 SCR 872 : (1976) 8 UJ 139 speaking through Singhal, J., has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim."

8. Though Shri Dey, the learned Counsel for the respondents made an attempt to submit that the Act being beneficial legislation, the applicants would be entitled for the compensation as awarded by the learned Commissioner. This submission is in clear terms dealt with by the Apex Court in the matter of Kerala State Electricity Board and another v. Valsala K and another (cited supra) which reads thus :--

"A two-Judge Bench of this Court in The New India Assurance Company Ltd. v. V.K. Neelakandan and others., etc. etc., Civil Appeal Nos. 16904-16906 of 1996, decided on 6.11.1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two-Judge Bench in Neelkandan's case (supra), however, did not take notice of the judgment of the Larger Bench in Pratap Narain Singh Deo's case, as it presumably was not brought to the notice of Their Lordships. Be that as it may, in view of the categorical law laid down by the Larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two-Judge Bench in Neelkandan's case is not correct."

9. Considering the submission of the learned Counsel for the appellant in view of the judgment of the Apex Court in the matter of Kerala State Electricity Board and another v. Valsala K and another (cited supra), in my opinion, the judgment

and order passed by the learned Commissioner is unsustainable and needs to be interfered with.

10. In the result, the appeal is allowed. The order dated 26.12.1996 passed by the learned Commissioner is quashed and set aside. The matter is remitted back to the Commissioner under the Workmen's Compensation Act at Nagpur to decide the application afresh by giving an equal opportunity of hearing to the parties and decide the same as early as possible and preferably within eight weeks from today.