(2014) 07 TP CK 0024

In the Tripura High Court

Case No : Miscellaneous First Appeal (WC) No. 04 of 2008

Promode Lal Das VsTripura Road Transport Corporation (TRTC)

Date of Decision : 09-07-2014

Acts Referred:
Workmens Compensation Act, 1923 — Section 28, 29, 4

Citation : (2014) 2 AnWR 863 : (2014) 143 FLR 151 : (2014) 4 LLJ 359

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : A. Sengupta, Advocate for the Appellant; P. Dutta, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—This appeal by the claimant is directed against the award dated 26.9.2007 passed by the Commissioner, Workmen''s Compensation, West Tripura, Agartala in case No. T.S.(WC) 63 of 2005 whereby the petition filed by the petitioner through the Inspector of Factories, West Tripura, Agartala has been rejected. The admitted facts are that the workman Pramode Lal Das was an employee of the Tripura Road Transport Corporation (TRTC). It is also not disputed that he received injuries during the course of employment in an accident which took place on 24.2.1993. Thereafter, the Chief Inspector of Factories asked the TRTC to pay compensation and the Inspector of Factories himself calculated the compensation at Rs. 20,595/-. This was paid by the TRTC and the matter ended. It is not disputed that the workman received this amount of Rs. 20,595/-. 11 (eleven) years after the receipt of this compensation, the workman informed the Inspector of Factories that after treatment the damage of his eye had increased from 20% to 30% and thereafter the Inspector of Factories filed this petition on behalf of the workman claiming compensation of Rs. 1,07,918/-. The learned Commissioner rejected this application mainly on the ground that without the doctor being examined the loss of earning capacity could not be assessed. He also held that the awarded amount was accepted by the workman in full and final settlement of his claims and, therefore, cannot be reopened.

2. Learned counsel for the claimant-appellant has challenged this award and states that since the earlier agreement whereby payment was made was not registered with the Commissioner, the employer was still liable to pay the full amount of compensation which he was liable to pay under the provisions of the Act.

3. Sections 28 and 29 of the Workmen''s Compensation Act read as follows:--

"28. Registration of agreements.--(1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that--

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

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(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

29. Effect of failure to register agreement.--Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise."

4. It is settled law that sections 28 and 29 have been incorporated in the

Workmen''s Compensation Act for the protection of the workmen. This is to ensure that workman is not paid any amount lesser than what is due and payable to him. If the workman even enters into an agreement and agrees to be paid an amount less than what is due and payable to him under the Act, then because of the non-registration of the agreement he is not debarred from claiming the amount due to him under the Act and which was not paid to him. Furthermore, section 29 clearly lays down that unless the Commissioner otherwise directs, the employer shall not be entitled to deduct more than half of the amount paid to the employee under the agreement. It would also be pertinent to mention that what section 29 mandates is that the employer is liable to pay the full amount of compensation which it is liable to pay under the provisions of this Act notwithstanding any agreement which may have been entered into between the parties.

5. If sections 28 and 29 are read together, it is clear that the purpose of registration is to ensure that the workman gets the amount which is due and payable under the Act. Supposing an employer pays to the workman an amount which is due and payable to him under the Workmen''s Compensation Act within a period of 30 days as provided under the Act, can the workman after a'' couple of years say that since the agreement was not registered he is again entitled to compensation? In my view, the answer is no since that is not the purport of the section. The purport is that he should get the full amount due and payable to him as per the Act on the date of accident and if that amount has been paid, the non-registration of the agreement will not mean that further amount has to be paid. However, if by the agreement an amount less than what was actually due under the Act is paid then the workman is entitled to file a petition claiming the full amount of compensation and the employer unless the Commissioner directs otherwise cannot take benefit of more than 50% of the payment made by him. This provision has been incorporated to ensure that employers pay the full amount of compensation.

6. In this case, there is another fact. Originally, it appears that the claim was submitted by the workman to the Chief Inspector of Factories and Boilers and it was he who assessed the compensation at Rs. 20,595/- and this amount was paid by the employer TRTC without any objection. The present application has also been filed by the Inspector of Factories on behalf of the workman. Therefore, the workman cannot deny the correctness of the agreement entered into on his behalf by the Inspector of Factories.

7. Coming to the calculation of compensation, the injured suffered an injury in the left eye. He has not lost total vision in the left eye but there is partial loss of sight. When the disability certificate was issued in the year 1993 at the time of the accident, the loss of vision of one eye was stated to be 20%. I have perused the certificate which clearly shows that he has not totally lost his vision in the left eye but there is partial loss of vision. Earlier the loss of vision was 20% and now it is 30%. Such an injury is a scheduled injury and covered by entry 26A of the

Workmen''s Compensation Act, 1923 and loss of partial vision of one eye is taken to be 10% loss of earning capacity. This entry was, however, incorporated in the year 1995 and we are to decide the matter as per the law which stood on 24.2.1993. As the law stood on that day, the maximum wages of an employee could be taken at Rs. 2,000/- per month and in case of permanent disability, 50%, i.e. Rs. 1,000/- had to be multiplied by the relevant factor. The claimant was 31 years old at the time of accident and as per Schedule IV the relevant factor would be 205.95. Therefore, in case of total 100% disability, the compensation payable would be Rs. 1,02,975/-. In case of 20% disability, the amount would be Rs. 20,595/- which has been paid by the TRTC.

8. The Workmen''s Compensation Act contemplates payment of compensation at one go. There is no provision under the Workmen''s Compensation Act for enhancement of compensation at a later stage. Now the position is in fact different. As the law stands today, in case of partial less of vision of one eye, the loss of earning capacity is taken at only 10% and the compensation would be even lower than what has already been paid. Therefore, without going into the other aspects of the matter, I am of the considered view that the claimant-appellant is not entitled to any enhancement of compensation.

9. The appeal is, therefore, dismissed. Send down the lower Court records forthwith.

