
(2003) 03 MP CK 0008
In the Madhya Pradesh High Court
Case No : F.A. No. 127 of 1996

Purushottam Tamrakar

APPELLANT

Vs

Shankar Lal and Others

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Employees Compensation Act, 1923 — Section 19, 3

Citation : (2003) 2 ACC 281 : (2003) ACJ 2117 : (2003) 3 MPLJ 27

Hon'ble Judges : P.C. Agarwal, J

Bench : Single Bench

Advocate : K.N. Gupta, for the Appellant; V.K. Bharadwaj, Kamal Jain and S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Agarwal, J.

By the impugned judgment dated 8.8.1996, the Addl. District Judge, Vidisha decreed a civil suit in part and awarded Rs. 62,000 as compensation for death of one Narendra Sharma in an industrial accident with interest at the rate of 12 per cent per annum.

Claimants were parents Shankarlal, R-1, Geeta R-2 and grandmother Ramkali, R-3 (who died during the pendency of appeal) of deceased Narendra Sharma, who used to work in Durga Metal Industry, owned by the appellant, since 1981 on monthly salary of Rs. 300. The deceased was working in the aluminium factory on 25.7.1985, who was burnt due to vapours raised while extinguishing furnace as water had receded below the same due to negligence of the appellant. Dr. G.P. Tamrakar, DW 2, had insisted that he would cure the deceased and thus the admission of deceased to Government hospital was delayed up to 26.7.1985. Later, on 4.8.1985, deceased had died. Deceased used to earn Rs. 150 per month as overtime allowance besides monthly salary of Rs. 300 and had a private earnings of Rs. 200 per month as a plumber. He was only 20 years of

age. Parents had been dependent on him and had preferred a claim for Rs. 2,96,400.

Appellant claimed that the industry, named, Durga Metal Industry had already been closed. Deceased was not a permanent workman in the same. Deceased had come to work on 25.7.1985 on daily wages and had stayed in the factory of his own choice. These were rainy days. Suddenly water had receded below the furnace. The deceased had pulled the rod for extinction of furnace whereby the burning coal had fallen in water creating vapours causing injury to the deceased. Doctor was called. Parents of deceased were informed. Appellant was not at fault. He was not negligent. Deceased was admitted to the hospital and was given the best possible treatment. The appellant had spent Rs. 25,000 in such treatment on humanitarian ground. Claim has been exorbitant.

Dr. G.P. Tamrakar, DW 2, denied that he had delayed admission of the deceased to the hospital. He was not negligent in treatment of the deceased.

Trial court had allowed the claim partly with interest against the appellant.

Besides challenging the liability and quantum of compensation, appellant raised two specific pleas. Firstly, that he was not the owner of Durga Metal Industry, which was owned by one Shrilal. Deceased had died while working in Bhagwati Metal Industry. Secondly, the deceased was an industrial workman and thus, civil court had no jurisdiction to decide the dispute which was to be settled by the Commissioner under Workmen's Compensation Act, 1923 ("Act" for short).

Certainly, no question as to jurisdiction of the civil court was raised in the trial court. The advocate for respondent Nos. 1 and 2 has raised a preliminary objection that no new plea can be allowed to be raised in appellate court. He has relied on Kotah Match Factory Kotah Vs. State of Rajasthan, ; Sri Ram v. Parshadi Lal AIR 1982 All 62; Songadh Group Gram Panchayat, Songadh and Others Vs. Ranianlal Ishverlal Patel, . As per advocate, there were no pleadings. No issue was framed. No question was considered by the trial court below. As per advocate of respondent Nos. 1 and 2, the appellant has waived his right to challenge the jurisdiction of civil court by not taking the plea at the earliest possible opportunity. He relied on Auto Trade and Transport Vs. National Insurance Company and Another, . They further relied on Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, and claimed that the industrial courts merely provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts, but thereby the jurisdiction of civil court is not barred.

On the other hand, the appellant has referred to Section 19(1) and (2) of the Act and has argued that the question of liability of any employer to pay compensation has to be settled by the Commissioner and the civil court has no jurisdiction to settle dispute and deal with any question which by or under the

Act is required to be settled, decided or dealt with by the Commissioner. He has relied upon *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and *State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others*, and has argued that the Act contains an effective machinery for resolution of the disputes between the workman and the employer and provides for appeal also and thus the same is a complete code on the subject and thus the jurisdiction of the civil court is barred. On the other hand, the learned advocate for respondent Nos. 1 and 2 has referred to the Employees Liability Act, 1938 and has claimed that the Act presupposes the possibility for suit for damages by the workman and merely bars certain defences to be taken by employer which according to him, would mean that the workman could file a suit in the civil court also.

In view of express provision of Section 3(5) of the Act which provides a choice or option to the workman either to file a civil suit or to claim before the Workmen's Commissioner, the plea taken by the appellant has no force. Language of the provision is as follows:

3(5)?Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a civil court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury?

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provision of the Act.

Under this provision, the workman has to elect between filing a civil suit in civil court or a claim before Workmen's Commissioner under the Act. Certainly, he cannot seek both remedies at one time. He can seek only one of the remedies at one time.

Certainly, as the workman had died in the accident, his dependants were entitled to claim for compensation by way of filing a civil suit under the general law of Torts as well as under Indian Fatal Accidents Act, 1855 in the civil court. Thus, the civil suit was competent. The civil court had jurisdiction to decide the claim. It was not a case of inherent lack of jurisdiction which could vitiate the trial. Certainly, the civil court has jurisdiction to decide the suit. The objection was without any substance. Even if a new plea could be allowed in appeal in view of *Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another*, , the objection was of no avail to the appellant.

Certainly, Harisingh, PW 2, had admitted that the deceased used to work in Bhagwati Metal Factory owned by Shrilal. This witness is an employee of

Purushot-tamdas Tamrakar, DW 1. The appellant Purushottamdas Tamrakar DW 1 has also claimed that the deceased used to work in Bhagwati Metal Factory. Kishanlal, DW 3, Naval Singh Ranghuvanshi, DW 4, and other employees of Bhagwati Metal Factory have also claimed that the deceased was working in Bhagwati Metal Industry. However, in para 5 of his written statement, the appellant had admitted that the deceased was working in his factory. No evidence could be read against pleadings of a party. His application for amendment of pleadings dated 6.3.1995 was dismissed on 3.7.1996 as the amendment was sought to be made at the very late stage when the civil suit against Shrilal, the brother of appellant, had already become barred by limitation. In the facts and circumstances, the learned trial court had correctly exercised his discretion in dismissing the application for amendment. It is noteworthy that the appellant had admittedly called Dr. G.P. Tamrakar, DW 2, for treatment and had spent on his own admission, Rs. 25,000 in treatment of the deceased though he has claimed that it was spent on humanitarian ground. Taking all the facts and circumstances cumulatively, the decision of the court below that the deceased was employed in the factory owned by the appellant was neither incorrect nor erroneous.

Certainly, the deceased was burnt on 25.7.1985. In month of July, rains are usual. There is no evidence on record that any unusual rains had been there on the date of occurrence. Certainly, rains in the month of July are not enough to establish the defence of "Act of God" or "vis major" taken by the appellant. Certainly, one who deals in aluminium smelting work and keeps a furnace therefor, has to see that water should not reach beneath it. Certainly, rule in *Rylands v. Fletcher* 1861-73 All ER 1, is applicable. *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, and *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, have to be referred to. Person undertaking an activity involving hazardous or risky exposure to human life is liable under law of Torts to compensate for injury suffered.

Certainly, the quantum of compensation is calculated on well established principles of law. The same is neither exorbitant nor unjust. There is no scope for interference in the same.

Thus, there is no substance in this appeal. The same is dismissed with costs. Judgment and decree of the trial court are hereby confirmed. Costs of respondent Nos. 1 and 2 shall be borne by the appellant. Advocate's fees as per schedule.