
(2001) 10 MAD CK 0075
In the Madras High Court
Case No : AAO. No. 264 of 1983

R. Chellappan

APPELLANT

Vs

The Deputy Commissioner of Labour (Commissioner for
Workmen's Compensation), Salem -2 and others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Workmens Compensation Act, 1923 — Section 19, 2, 2(1)(d), 23, 3

Citation : (2001) 10 MAD CK 0075

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : K.R. Vijayakumar, for the Appellant; S.T.S. Murthy, Special Government Pleader (C.S.) for Respondent 1 and Mr. M. Muthusamy, for the Respondent

Judgement

K. Sampath, J.—The opposite party in W.C. Case No. 115/82 on the file of the Commissioner for Workmen's Compensation, Salem, is the appellant in the Civil Miscellaneous Appeal. The application before the lower Court was made by the second respondent herein claiming compensation in a sum of Rs. 18,000/- for the death of her husband one Sengoda Moopan in an accident arising out of and in the course of his employment under the appellant herein on 4-9-1982. Her case was as follows:

Her husband was employed by the appellant herein for tapping toddy from the coco palm trees in the coco palm grove owned by one Ramasamy, son of Kandasamy Gounder. The coco palm grove was leased by the said Ramasamy to the appellant for tapping of toddy for the purpose of his toddy shop, in which Sengoda Moopan was employed with other workmen. She was a dependant of the deceased being his wife. He was earning Rs. 250/- as monthly wages.

2. The appellant opposed the claim and contended as follows:

He did not engage Sengoda Moopan for any work and there was no master and

servant relationship between the deceased and appellant. He was not a workman under 2(s) of the Workmen's Compensation Act (hereinafter referred to as the Act). The post mortem certificate stated the age of the deceased as 65 years at the time of the alleged accident. Normally, nobody engaged anybody over 40 years for tapping toddy. The employment was not admitted. The toddy tapping licence No. 14/82-83 for the period 25-8-1982 to 15-12-1982 would clearly show that the deceased was not employed by the appellant. The licence clearly stipulated that nobody else other than whose name was mentioned in the licence would be employed. Otherwise, the licence would be cancelled for violation of conditions. The appellant was not aware of any accident alleged to have taken place on 31-8-1982. He was also not aware that Sengoda Moopan died on 4-9-1982. As per the claim petition, it was alleged that the accident took place in the coco palm grove of one Ramasamy, but in the report given to the Mettur Police in Crime No. 285/82 by the deceased Sengoda Moopan on 31-8-1982 it was categorically stated that he was employed in the grove owned by one Rathinam. This contradiction itself would prove that the claim was a false one intended to extract money from the first respondent. Even assuming, but without admitting that the accident took place in Ramasamy's coco palm grove, the deceased was only a trespasser and the appellant was not in any way responsible for his death.

3. Before the Commissioner for Workmen's Compensation, the claimant examined one Ganesan as C.W.1, one Kaveri as C.W.2, and examined herself as C.W.3. The identity card and the post mortem certificate were marked as Exs.A-1 and A-2 respectively. On the side of the appellant, he examined himself as R.W.1 and one George, Head Constable as R.W.2. He marked Form T.T.3 Tree Tapping Licence as Ex.R-1, instructions to the arrack shoppers as Ex.R-2 and 7 identity cards as Ex.R-3 and the police records in connection with F.I.R. No. 285/82 as Ex.R-4.

4. On the basis of the oral and the documentary evidence, the Commissioner found that the deceased was employed by the appellant, that mere omission of the name in the identity card would not be conclusive proof that he was never employed by the appellant, that there was no proof that on the date of the accident, he was employed elsewhere and that the evidence of the witnesses, who spoke on behalf of the claimant was acceptable. So holding, the I Commissioner passed an award for Rs. 18,000/-.

5. It is as against that the present Civil Miscellaneous Appeal has been filed.

6. It is on record that the entire amount claimed was deposited by the appellant and the claimant also was permitted to withdraw Rs. 5,000/-

7. Pending this appeal, the claimant Pavayee Animal died. Applications have been taken out in C.M.P. Nos. 9700/- to 9703/93 to condone the delay, to set aside the abatement, to bring on record the legal representatives of deceased Pavayee Ammal as respondents 3 to 8 and to appoint the 6th respondent Rajammal as

guardian of minor respondents 7 and 8 and they were ordered on 18-9-2001.

8. Mr. K.R. Vijayakumar, learned Counsel for the appellant, made the following submissions:

It had not been proved that the deceased was employed by the appellant at any point of time. The Commissioner was in error in coming to the conclusion that there was relationship of master and servant between the appellant and the deceased. There was absolutely no evidence to show that the deceased was employed by the appellant and that he died while he was performing his duties under the appellant. The Commissioner was in error in brushing aside the licence granted to the appellant, which contained the names of persons employed by the appellant for tapping toddy in the grove taken on lease by him. There was a clear embargo in the licence that the licensee should not engage anybody other than those mentioned in the licence and the Commissioner had whimsically brushed aside the licence and come to a wrong conclusion. There were several discrepancies in the oral evidence let in on the side of the claimant and the deceased himself in his report to the police had stated that the accident had taken place in the grove owned by one Ratnam, whereas the claimant had stated that the accident had taken place in Ramasamy's grove. This apparent contradiction had been lost sight of by the Commissioner.

9. The learned Counsel made a further point on the strength of the ratio of the decision of a Full Bench of this Court in B.M. Habeebullah Maricar Vs. Periaswami and Others, and submitted that the dependant having died, her legal representatives could not be stated to be dependants coming within the four corners of the Act and that they would not be entitled to get the amount.

10. Per contra, Mr. M. Muthuswamy, learned Counsel for respondents 3 to 8, contended that the Full Bench decision would not apply to the facts of the present case, that it arose under different circumstances, that the appeal itself did not raise any substantial question of law as contemplated u/s 30 of the Act that the Commissioner on an appreciation of the materials on record, had come to a factual finding that the deceased was a workman employed by the appellant and that he died in the course of employment, The learned Counsel also relied on the judgment of the Rajasthan High Court in Gopal Synthetics Vs. Workmen's Compensation Commissioner and Others,

11. In N.P. Lalan Vs. V.A. John, J. (as the learned Judge then was) on the scope of Section 30 of the Act observed as follows:

The Act with which I am concerned relates to workers and the entire purpose of the statute is to see that the weaker section of the community, namely, the working class, is not caught in the meshes of litigation which involves a protracted course of appeal. That is why the statute creates a special Tribunal and provides only for a restricted appeal. The benignant object of saving the worker from long expensive litigation would be defeated if a loose interpretation were to be given to the Proviso u/s 30 and all kinds of appeals, merely because

there is some point which has the look of law are admitted. A highly restrictive meaning has to be imported because of the very legislative purpose and the class of litigation covered, even apart from the drastic expression used in the Proviso... I am clear in my mind that the argument that the Proviso to Section 30 has been interpreted liberally in the pre-Constitution days is of no significance. The same words, with socioeconomic developments in society, acquire a new emphasis in tune with the changed conditions. It is clear, therefore, that the dynamics of legal interpretation based on social changes which have taken place in the nation's life and goals demand that I should construe the Proviso to Section 30 so as to inhibit appeals at the instance of employers even if there be some questions of law or gross errors of fact, unless very substantial legal issues arise I find it difficult to agree with counsel for the appellant that misappreciation of or absence of evidence vitiating the order under appeal, even if true, can be brought within the scope of the Proviso to Section 30 or can be exaggerated into a substantial question of law. At the Commissioner's level most such employer-employee questions, legal or factual, must end, appeals being open in a very limited category. The Proviso to Section 30 vis-a-vis the employer and his right of appeal reminds me of the biblical allusion to the camel and the eye of a needle...

12. I have held in C.M.A. No. 635/93 that the proposition by the learned Judge had been too widely stated and had been so done without reference to the ratio of the Supreme Court.

13. In Hind Trading Company Vs. Union of India (UOI) and Another, dealing with the scope of Section 30 of the Workmen's Compensation Act, the Supreme Court observed as follows:

When a conclusion had been reached which could not reasonably be entertained by the authority if it properly understood the relevant enactment then it clearly fell into a patent error in point of law. When law has been wrongly applied to admitted facts interference u/s 30 of the Act is clearly called for. The finding of fact which is not based on evidence is also a question of law warranting interference.

14. In Mackinnon Mackenzie and Co. Ltd. Vs. Miss Velma Williams, the Commissioner for Workmen's Compensation decided that,

although it was a case of suicide, the suicide was due to temporary insanity or some kind of insanity and mental depression and that arose out of and in the course of employment.

The Calcutta High Court chose to go into the facts of the case observing as follows:

Normally, this would be a question of fact with which this court will ordinarily be disinclined to interfere. Here it is not so much a question of fact but an inference by the learned Commissioner for Workmen's Compensation which we find impossible to support on the facts of this case. Indeed it is more a conjecture by

the Commissioner than an inference. The distinction between inference and conjecture is that an inference rests upon premises of fact, a conjecture does not, as pointed out by Lord Shaw in *Kerr v. Avr Steam Shipping Co. Ltd.* 1915 AC 217 233

Thereafter, the Calcutta High Court went on to examine the facts on which the Commissioner came to the conclusion.

15. In *Sumitra Devi v. Executive Engineer, Udar Asthan Irrigation Division, Jahanabad, Gaya* 1997 III Sup LLJ 1058 it has been held by a Division Bench of the Patna High Court as follows:

The meaning and the import of the words substantial question of law has been the subject matter of discussion and decision by the various High Courts and the Apex Court. So far as the question of general public importance and the questions where no final decision has been given by the High Courts or finally settled by the Supreme Court are concerned, the same have been held to be the question involving substantial questions of law. However, such questions will arise only in far and few cases and if the Section 30 is interpreted to include only those two situations in that case, Section 30 will not serve its purpose especially when Section 30 provides for the first appeal against the judgment of the Commissioner. In my view, this section has to be given a liberal meaning. If a question of law arising between the parties is of arguable nature, then that will be a good ground of appeal u/s 30 of the Act. Apart from the aforesaid ground if the Commissioner while arriving at the finding of fact has overlooked the material evidence or has relied upon inadmissible evidence or has applied the law wrongly or his finding is based on no evidence or is based on only conjecture and surmises or has overlooked the statutory provision or misconstrued the same, then such question for the purpose of Section 30 will be said to be the substantial question of law. However, I would like to add that insufficiency of material in arriving at a finding or reappraisal of evidence on the ground that a different view is possible on the same set of facts cannot be said to be a substantial question of law. For the purpose of Section 30 of the Act, if the question of law is fairly arguable or where there is a room for difference of opinion with regard to the question involved, then the question will be treated as substantial question of law. Thus, in my considered view, it is open to the appellant to challenge the finding of facts duly arrived at by the lower court on any of the ground mentioned above:-

16. The High Court has undoubted power to set aside the order of the Commissioner. The notes of caution are that,

- (1) there should not be reappraisal of evidence,
- (2) If a finding had been arrived at on insufficient material, and
- (3) If a different view is possible on the same set of facts, then the High Court must keep its hands off.

17. It was observed by Chagla, Chief Justice of the Bombay High Court in *Prakash Cotton Mills (Private) Ltd. Vs. The State of Bombay*, as follows:

No labour legislation, no social legislation, no economic legislation, can be considered by a court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution.... It would indeed be startling for any one to suggest that the Court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bring about social justice.

18. In *Executive Engineer, National Highways Division v. Kamal Gouduni* 1976 Lab IC 1765 (it is stated as follows:

Rights of workmen deserve to be generously treated in a welfare state and legislative measures like the Workmen's Compensation Act should be construed in more liberal sense and, as far as possible, in favour of workmen so that deserving workmen get full and speedy benefit and advantage of its beneficent measures.

19. No doubt, it has been pointed out by the Allahabad Full Bench in *Mst. Abida Khatun Vs. General Manager, Diesel Locomotive*, that,

the broad sweep and generalisation and emphasis on social objectives must yield place to a more legalistic approach in the field of industrial jurisprudence.

20. In my view, the Commissioner in the present case had properly appreciated the materials on record and come to a factual decision that the deceased was employed by the appellant, that he died in an accident, which arose out of and in the course of employment. It is in evidence that the appellant arranged for the taxi to take the deceased soon after the accident to the hospital. He also signed in the postmortem report and according to his evidence, he signed because he sent the taxi. We may immediately advert to his stand in the counter. In paragraph 5 he stated that he was not aware of any accident alleged to have taken place on 31-8-1982 and that he was not aware that the said Sengoda Moopan died on 4-9-1982. I am afraid that there is no case made out for invoking Section 30 when it is a factual finding on an appreciation of the oral and the documentary evidence.

21. However, there is another point raised by the learned Counsel for the appellant relying on the decision of the Full Bench of this Court already referred to. The learned Counsel submitted that the ratio of the Full Bench decision will squarely apply to the facts of the present case. That was a case where even before the claim was decided, the claimant died. The mother was the claimant and during the pendency of claim, she died. Her son and two daughters wanted to be the legal representatives. The Commissioner allowed the application. The employer challenged the order by way of writ petition. It came up before a learned single Judge, who refused to follow a Division Bench decision of this

Court in *Ikkassintakath Abdurahiman v. Madakkavu Nalikkal Beeran Koya* 1938 I MLJ 571 = 47 L.W. 159 and straightway referred the matter for decision to a Full Bench that. It was held by the Full Bench that,

the benefit which the Act provided was for the workman himself and his dependants and to no others. To extend the benefit of the Act to the legal representatives of the deceased workman or of the dependants would be to burden the employer with liability not flowing from the object which the Act sought to achieve and to pass on the benefit provided by the Act to persons altogether outside the class contemplated by it. The heirs of the dependant or of the deceased would not, therefore, be entitled to claim compensation under the provisions of this Act.

22. In the opinion of the Full Bench, the definition of the term "dependant" in clause (d) of sub-section (1) of Section 2 of the Workmen's Compensation Act is not intended to benefit all the heirs of a deceased workman, but to embrace only those relations who, to some extent, depend upon him for their daily necessities, so much so that even some of his nearest and dearest ones, i.e. sons, who have attained majority married daughters and an illegitimate daughter, whether married or not, are excluded if they were not dependant on the worker's earnings, wholly or in part, kinship, coupled with dependency is thus made criterion for a person to fall within the ambit of definition and if that is so, there is no reason why the benefit of the Act should go to heirs other than dependants and Section 9, coupled with the definition in clause (a) of sub-section (1) of Section 2 be given a restricted meaning in derogation of the language used by the Legislature. The learned Counsel laid particular stress on paragraph 7 last portion which is as follows:

A look at this definition of the term "dependant" would show that it is not intended to benefit all the heirs of a deceased workman, but to embrace only those relations who, to some extent, depend upon him for their daily necessities, so much so that even some of his nearest and dearest ones, viz. Sons who have attained majority married daughters and an illegitimate daughter, whether married or unmarried are excluded if they were not dependant on the worker's earnings, wholly or in part. Kinship coupled with dependency, is thus made the sole criterion for a person to fall within the ambit of the definition. And if that be so, there is no reason why the benefit of the Act should go to heirs other than "dependants" and Section 9 coupled with the definition in clause (n) of sub-section (1) of Section 2 be given a restricted meaning in derogation of the language used by the legislature. To hold otherwise and to extend the benefit of the Act to the legal representatives of the deceased workman or of the dependants would be to burden the employer with liability not flowing from the subject which the Act sought to achieve and to pass the benefit provided by the Act to persons altogether outside the class contemplated by it.

The Full Bench refused to rely on a Division Bench judgment of the Calcutta High Court in *Pasupati Dutt Vs. Kelvin Jute Mills*, and the decision of the Andhra

Pradesh High Court in Radhakrishna Rice Mill. v. Appalacharyulu (1958 I LLJ 746 = 1958 I An WR 316 According to the Bench, the earlier Division Bench of this Court in Ikkassintakath Abdurahiman and Another Vs. Nadakkavu Malikkal Beeran Koya, did not lay down correct law and the reasoning of the Full Bench was as follows:

In the first place, no reason is assigned by them for limiting the expression "the workman" to a workman who is alive and for refusing to extend it to the case of one who is dead, even though transfer by inheritance is a recognised mode of devolution by operation of law. In my opinion, there is no valid reason for restricting the meaning of the expression "pass to any person other than the workman by operation of law" which should be given its ordinary meaning viz. that in no case the sums mentioned shall stand transferred to a person other than the workman by reason of any legal provision. In other words, the expression is intended to shut out completely the passage of the right of compensation to persons other than the workman. In the second place, the assumption of the Bench that the section could in terms apply only to a case of an existing workman appears to have been made by reason of the provisions of clause (n) of sub-section (1) of Section 2 not having been brought to its notice

After extracting the clause defining the "workman" the Full Bench observed further as follows

The concluding part of the clause which states that any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them, is very significant. For all practical purposes it enlarges the definition of "workman" so as to bring within its compass the dependants of the workman and when this part of the clause is brought to bear on the interpretation of Section 9, the relevant part of that section would surely be readable thus

... or pass by operation of law to any person except the workman (who has been injured) and (where the workman is dead) his dependants.

This means that in Section 9 is interpreted in the light of the definition in the said clause (n), that section should apply not only to a workman who is alive and to whom compensation is payable but also to one who is dead and whose dependants are not in a position to receive the compensation. The word "workman" as occurring in Section 9 would thus mean the workman himself if he is alive and his dependants if he is not. The opinion to the contrary expressed in the Bench decision having been arrived at without a reference to that definition must be held to have been based on an erroneous reading of Section 9 which rules out the passing of compensation by succession to heirs of a deceased workman who are not his dependants.

The interpretation of Section 9 just above arrived at by me finds support from the object and various other sections of the Act.

The Full Bench referred to the preamble Section 3, Section 4 and provisions of Schedules 1 and 4 to the Act, Sections 5, 6, 7, 8, and 23.

23. The Full Bench further observed as follows:

A combined effect of Section 23 of the Act and Rule 41 of the rules is that only certain provisions of the CPC and not others have been made applicable to proceedings under the Act. Order 22 which deals with legal representation in cases where parties to proceedings die is conspicuous by its absence from Rule 41 and lends further strength to the conclusion above arrived at that such representation was not contemplated in a case falling under the Act.

24. So far so good. But then we should remember that the question before the Full Bench arose under the following circumstances:

A workman of the employer died of a fall from a tractor belonging to him. His mother filed a claim for compensation. During the pendency of the claim, the mother also died and, thereafter, the legal representatives wanted to be substituted in the place of mother and the same was allowed. Against that, the writ petition came to be filed and the Full Bench held that.

the benefit which the Act provided was for the workman himself and his dependants and to no others. To extend the benefit of the Act to the legal representatives of the deceased workman or of the dependants would be to burden the employer with liability not flowing from the object which the Act sought to achieve and to pass on the benefit provided by the Act to persons altogether outside the class contemplated by it.

In those circumstances, the Full Bench held that the heirs of the dependant or of the deceased would not be entitled to claim compensation under the provisions of the Act.

25. The Full Bench did not have to consider a situations like the present one where the claim had fructified into an award and the appellant herein filed an appeal after depositing the amount before the Commissioner for Workmen's Compensation. Out of that amount, a sum of Rs. 5,000/- had also permitted to be withdraw by the claimant. The accident took place on 31.8.1982 and the employee died on 4.9.82. There is no dispute that the claimant was a dependant of the deceased. She has lived for several years, thereafter, and died only in 1990. She must have needed some money to support herself for her food, shelter, etc. It would be highly unjust if it is to be held that the Full Bench had also contemplated a situation like the present one. No doubt, it is contended by the learned Counsel for the appellant that the logical consequences of the ratio, of the Full Bench would only mean that the legal representatives of a dependant would not be eligible to get the compensation awarded.

26. In my view, the ratio of the Full Bench must be confined only to a case where the claim had not crystallized into an award and not a case like the present one. I, therefore, hold that the decision of the Full Bench cannot be pressed into

service to the facts and circumstances of the present case. It should also be noticed that the matter had been pending from 1983 before this Court and it has taken 19 years to come up for hearing for no fault of the claimant. The Court's delay shall prejudice nobody.

27. My view is strengthened by the decision of a single Judge of the Rajasthan High Court in *Gopal Synthetics Vs. Workmen's Compensation Commissioner and Others*, The Rajasthan High Court has held that,

Once the amount is fixed in lump sum the only thing that remains to be done is to see whether the claimant is a dependant within the meaning of Section 2(1) (d) of the Act or not. The death of the dependant is not the factor by which a claim filed by the dependant becomes non est. There is no specific provision in the Act which disentitled the dependant by subsequent event. To be more elaborate, if a workman died and the claim is filed by the sole dependant, as the claim could not be decided for a number of years and during that period the dependant had incurred liability/expenditure for maintenance in the expectation of the claim, then whether it would be justified to deny the claim to the legal representative because of the death of dependant subsequently. The provisions of the Act are beneficial for the labourer and his family and therefore, they have to be interpreted in the manner, so as to advance the object rather than putting any obstruction in the implementation of justice.

The right existing on the date of death/accident of the workman is the only criterion for claiming the compensation and, therefore, the mother of the deceased (in that case) who filed the claim petition was entitled to the compensation in accordance with the provisions of the Act. On her death, the amount could be claimed by her legal representatives.

The Rajasthan High Court referred to our Full Bench decision in *B.M. Habeebullah Maricar Vs. Periaswami and Others*, and distinguished the same. The Rajasthan High Court also referred to the decision of the Supreme Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, wherein it has been observed that,

the employer became liable to pay the compensation as soon as the personal injury was caused to the workman by the accident which admittedly arose out of and in the course of employment. The plea that the compensation was not due till the Commissioner's order was passed u/s 19 was negatived.

It has been further observed that,

on the basis of the aforesaid judgment, it can be said that the act of determination of liability u/s 19 is not the determining factor for the liability of the employer which may be at the later stage.

This Supreme Court decision was not referred to by the Full Bench.

28. Once the right is crystallized and vested in the dependant, it becomes a civil right and his legal representatives are entitled to step into the shoes of the

dependant. In paragraph 15, the Rajasthan High Court has observed as follows:

The provision of the Act contemplate lump sum amount by way of compensation on accident/death. The said amount is not depending on any subsequent event but is relating to the rights of the persons, i.e. dependant, to claim it in accordance with law once the amount is fixed in lump sum the only thing that remains to be done is to see whether the claimant is a dependant within the meaning of Section 2(1)(d) of the Act or not. The death of the dependant is not the factor by which a claim filed by the dependant becomes non est. There is no specific provision in the Act which disentitles the dependant by subsequent event. To be more elaborate if a workman has died and the claim is filed by the sole dependant, as the claim could not be decided for a number of years and during that period, the dependant had incurred liability/expenditure for maintenance in the expectation of the claim, then whether it would be justified to deny the claim to the legal representative because of the death of the dependant subsequently. The provisions of the Act are beneficial for the labourer and his family and therefore, they have to be interpreted in the manner so as to advance the object rather than putting any obstruction in the implementation of justice.

The right to claim compensation accrues on the date of the death of the deceased. Consequently, the appeal fails and the same is dismissed. There will, however, be no order as to costs.