
(1996) 11 AP CK 0021
In the Andhra Pradesh High Court
Case No : A.A.O. No. 1490 of 1990

Ranga Cotton Ginning Mills

APPELLANT

Vs

Ginjumpalli Ratna Kumari and Another

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (1997) 4 ALT 435 : (1998) 3 LLJ 999

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : G. Ramachandra Rao, for the Appellant; Ghanta Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Somasekhara, J.—The appellant is the Opposite party in W.C.No.25 of 1989 on the file of the Commissioner for Workmens" Compensation, Guntur Region, Guntur who suffered an award u/s 3 of the Workmens" Compensation Act (in short "the Act") wherein holding that the workman Mr. Sambasiva Rao died due to the injuries suffered by him during the course of employment under the appellant. The learned Commissioner awarded Rs. 26,432.64 ps. by way of compensation to the respondents herein who are the legal heirs of the deceased Sambasiva Rao.

2. Mr. G. Ramachandra Rao, the learned Counsel for the appellant has contended that the appreciation of evidence in the case by the learned Commissioner is opposed to the facts and circumstances of the case and has a preference to ocular evidence as against the documentary evidence proving that the deceased was not an employee of the appellant at the time of the accident and his death. It is further contended by him that the inferences drawn by the learned Commissioner against the appellant were unjustified, the best evidence possible, both oral and documentary, was produced which the claimants could not meet with their oral evidence which is tarnished with contradictions and interested

ness.

3. Mr. N. Subba Rao, the learned Counsel for the respondent-claimants while resisting the contentions as above has pointed out that the appreciation of evidence by the learned Commissioner is reasonable, supported by materials and not tainted with capriciousness or arbitrariness and therefore this Court in the appeal may not, in the ordinary circumstances, interfere or set aside the said award. It is also his contention that if the case does not fall u/s 3 of the Act, it must be brought atleast u/s 12 of the Act making the appellant liable for the employee of the customer who died in the accident in the course of the employment of atleast under the customer who stands in the position of a contractor. Mr. Ramachandra Rao, the learned Counsel for the appellant has squarely dismissed such an argument by saying that at no cost Section 12 of the Act can be attracted to the facts and circumstances of the case as it is nobody's case that another person under whom the deceased might be working was engaged or utilised as a contractor by the appellant for any purpose at the relevant time. The learned Counsel for the appellant is emphatic that this appeal is confined to the only question whether there was relationship of master and servant between the appellant and the deceased Sambasiva Rao and the rest of the findings leading to the award are not challenged.

4. The admitted and proved facts in the case may provide an anchor to bind the controversies for determination. The appellant is a partnership Ginning Mill called Ranga Cotton Ginning Mills". Its business is found to be ginning process of the cotton brought by the customers. The theory that it trades in cotton seeds and cotton is rightly rejected in view of the evidence in the case. On May 12, 1988 the deceased Sambasiva Rao met with an accident within the premises of the mills of the appellant while engaged in loading and unloading cotton and he succumbed to the injuries on May 16, 1988. The respondents/claimants pleaded that the deceased was working under the appellant at the relevant time and suffered the accident and injuries and died in the course of the employment and sought compensation u/s 3 of the Act. The appellant denied such a relationship with the deceased and on the other hand contended that there was no practice of employing or engaging such workers like mutta workers" for loading and unloading which was the job of the customers who bring cotton for ginning in the mills to engage such persons and as such the deceased was actually engaged by one M/s. Lakshmi Cotton Enterprises who had brought cotton for ginning in the mills at the relevant time, The wife of the deceased examined herself as AW.1 and to witnesses as per AWs. 2 and 3 whereas on behalf of the appellant, RW.1 its proprietor was examined in addition to other witnesses as per RWs. 2 to 5. Exs.A. 1 and A. 2 were the documents depended upon by the respondents herein whereas R.1 to R.5 were the documents for the appellant, The learned Commissioner believed the case of the claimants that the deceased died in the course of the employment under the appellant as a worker and therefore assessed the compensation taking his age, his income and the guidelines under Schedule IV of the Act and awarded the compensation as above.

5. The finding of the learned Commissioner is based on the appreciation of evidence and the circumstances in the case, viz., (1) the deceased was working within the mill premises of the appellant met with an accident, suffered the injuries leading to his death at the relevant time; (2) the appellant did not take interest in regard to the accident suffered by the deceased in spite of the knowledge although it occurred within the premises of the mill; (3) the documents Exs.R. 1 to R.3, the attendance register, wage register and register of employment are not reliable as they were got certified by the Labour Inspector on May 19, 1988, subsequent to the date of the accident; (4) the appellant was not in the habit of issuing appointment orders much less such mills not in the habit of issuing such orders to its employees, of the nature of the deceased is a circumstance not to be depended in this case by documentary evidence in this case in proof of the relationship between the appellant and the deceased; (5) the appellant failed to prove that the deceased was engaged or employed by one Lakshmi Cotton Enterprises for ginning cotton in the mills of the appellant at the relevant time; (6) the appellant is guilty of many lapses not conforming to the required rules of maintaining the records to bring out the truth in the matter. The evidence of the claimants in such circumstances was reliable and therefore proved the relationship between the appellant and the deceased to award the compensation u/s 3 of the Act. Mr. Ramachandra Rao, the learned Counsel for the appellant has no grievance about the materials depended upon by the learned Commissioner to draw such inferences but he only seriously questions the inferences drawn from such materials and the finding recorded on the main controversy between the parties. Therefore, now the question rests in this Court whether the learned Commissioner could have drawn such inferences on the comparative probabilities disclosed, from such materials and whether any other inference was possible than the one drawn leading to the finding and whether in an appeal like this Court can interfere with the same.

6. We are dealing with an appeal u/s 30 of the Act. Except mentioning that the orders against which an appeal lies in addition to the period of limitation, the provision does not mention the powers of the Appellate Court in dealing with such a matter. There is also no other provision either in the Act or under the rules regulating the procedure to deal with an appeal. But as rightly pointed out by the learned Counsel Mr. Ramachandra Rao, the proviso to Section 30 of the Act prescribes that no appeal shall lie unless substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in Clause (b) unless the amount in dispute in the appeal is not less than Rs. 300/-. The remaining two provisos also prohibit an appeal where the parties have agreed to abide by the orders of the Commissioner and unless the memorandum of appeal is accompanied by the certificate of the Commissioner that the appellant has deposited with him the amount payable under the order appealed against. Therefore, needlessly to understand, the scope of the appeal u/s 30 of the Act, there is a total prohibition to deal with the matter by way of appeal unless it involves a substantial question of law. To make it certain it must

be mentioned that the pure finding of fact cannot be the subject matter of such an appeal. But the finding of fact based on no evidence or perverse appreciation of evidence totally opposed to accepted principles, thereby raising a substantial question of law, whether such a finding can be supported, appeal can be maintained. Therefore, legally it must be noticed that the law relating to the appeals against such orders has been codified in Section 30 of the Act providing for an appeal only in relation to certain matters and not in all circumstances. As the provision is a blanket expression of law makers with the aid of any other provision or the rules framed thereunder, the philosophy behind such a provision may require some examination.

7. "Commissioner" who is defined u/s 2(1)(b) of the Act means a Commissioner for Workmen's Compensation appointed u/s 20 of the Act wherein the State Government may by notification in the official gazette appoint any other person to be the Commissioner for Workmen's Compensation for such area as may be specified in the notification. Such a Commissioner would be thus a statutory authority to perform the functions enshrined under the Act to deal with the claim for compensation under Sections 3 and 12 of the Act and to assess the compensation in accordance with Section 4 and Schedule IV of the Act. The jurisdiction of; the Civil Court or any other Court in regard to such powers or questions should be taken as impliedly barred to adjudicate upon such claims. In the scheme of the Act and the relevant provisions a Commissioner for Workmen's Compensation is not a Court within the strict meaning therein to adjudicate in the matter in the method and the manner a Court does. In view of Section 23 of the Act, the powers and procedure of the Commissioner are to exercise as if it is a. Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXXV of Code of Criminal Procedure, 1898. This Court in Divisional Engineer v. Anasuya 1972 (1) ALT 248 has held that the Commissioner functions as a quasi-judicial authority and is therefore bound to pass a speaking order assigning reasons. Sections 24 - 27 of the Act deal with the appearance of the parties, method of recording evidence, award of costs and power to submit the case to the High Court for decision on a question of law. Therefore, within the scheme of the Act, the Commissioner is a creature of the administrative law and an administrative authority exercising quasi-judicial powers to render the decision in the claim cases under Sections 3 and 12 of the Act. The deemed provision u/s 23 of the Act is only for a particular purpose and in generality such an authority has trappings of Civil Court and not strictly a Court as is understood in the jurisprudential adjudicatory authority. The law is settled that although a statutory Tribunal or the authority exercising quasi-judicial powers are obliged to give oral hearings and opportunity to the parties who are going to be affected by the decision ultimately by adopting the principles of natural justice, they are not normally bound by the legal rules of evidence and the law goes to the extent of

saying that it may also receive hear-say evidence provided always that the party affected is given fair opportunity to contest it as natural justice requires. (Pages 925 and 926 of Administrative Law by H.W.R. Wade, 6th Edition, 1988). The Franks Committee which was appointed to go into such question about the powers of such Tribunal in dealing with such enquiries to apply rules of evidence recommended that most Tribunals need not observe the strict rules of evidence of the Courts. Some of the rules of evidence have the purpose of shielding, for social reasons, certain privileged communications made in confidential relationships and those ought to apply to administrative Tribunals no less than to ordinary Courts. However, it did not bar taking judicial notice of certain matters to accept it as proved depending upon the experience of the persons involved in the adjudication process. (P. 195 of Principles of Administrative Law by JAG Griffith, 5th Edition, 1973). Therefore, it was settled in the Administrative Law that an appeal against such a decision can be only on points of law including the issue whether there was evidence on which the Tribunal could in law have arrived at its decision. (P. 197 of Principles of Administrative Law by Griffith supra and P.937 and 938 of Administrative Law by Wade supra). Such a concept has thus been codified in Section 30 of the Act for the reasons stated above. But while considering the question as to what is the substantial question of law, the Courts are to examine the materials on record with facts leading to inferences and the finding. "To find facts based on no evidence is by a well established rule, an error of law. In principle, therefore, a tribunal's finding of facts can be challenged by way of appeal on a point of law if they are based on no evidence within the meaning of the rule" (P. 938 of Administrative Law by Wade supra). Therefore, a distinction is drawn whether a finding of such an authority is based on evidence or no evidence or insufficient evidence. That determines the existence of substantial question of law where appreciation of evidence is involved.

8. In the light of the jurisprudential probe and the commandment of the powers of the Commissioner being such an authority, the question arises as to how the evidence in the case has to be considered or appreciated by such an authority, when particularly strict rules of evidence or Evidence Act are not applicable. The Supreme Court in a decision rendered by three Judges in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, had an occasion to deal with the question strictly arising u/s 3 of the Act, where the question whether an accident arose out of and in the course of the employment u/s 3 of the Act was considered to hold that the burden rests upon the workman to prove it and the Commissioner can draw inferences from proved facts, but he should not base his findings merely surmises or conjectures. The elaboration of the rest is found in Para 6 as follows at p. 19 :

"In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of

employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise; conjecture or guess. On the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it."

Referring to Lord Birkenhead L.C., in *Lancaster v. Blackwell Colliery Co. Ltd.* 1918 W.C.Rep. 345, the passage therein elaborating the question has been approved and quoted as -

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in those matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

Therefore, while examining such a finding of fact based on materials in the case, the duty on the Appellate Court lies in dissecting the imponderables in the probabilities and the impossibilities in the situation to hold that such a finding can never exist at any cost or that such a finding can never be tampered with unless for justifiable reasons. That is why the Supreme Court in *C.K. Subramanya Iyer v. Kunhi Kuttan Nair* 1970 ACJ 110 cautioned that the Appellate Court should be slow in disturbing the findings recorded by the Courts below if they have taken all the facts into consideration and that matter arose out of an award passed by a Motor Accident Claims Tribunal u/s 110-A of the M. V. Act and equally the rule applies for an award of a Commissioner under the Act which is similar to an award passed by the Motor Claims Tribunal u/s 110-A of the M. V. Act.

9. So having settled the law on the question, this Court with all circumspection is examining whether the finding of the learned Commissioner falls within the category of raising a substantial question of law basing its decision on no evidence or with most unsatisfactory evidence which no reasonable and prudent man would think that it can be acted upon. We can also examine whether such a finding is totally arbitrary, perverse and not supportable at all costs. The learned Commissioner had two theories to consider viz., (1) that the deceased was working under the appellant at the time of the accident leading to his death, and (2) that not only he was working at the relevant time but also was employed under one M/s. Lakshmi Cotton Enterprises. The claimants tried to establish the initial onus with the testimony of claimant No. 1 and A.Ws. 2 and 3, claiming to be the past employees of the appellant. A.W. 1 is the wife of the deceased. Except saying that her husband was working under the appellant since inception, she

has no personal knowledge except perhaps through her husband which is not corroborated nor supported by any document. Admittedly, AW. 2, the brother-in-law of claimant No. 1 and co-brother of the deceased is an interested witness. His testimony that he was employed under the appellant like the deceased found no supporting document. AW. 3 is not an interested witness. His testimony that he was employed as a clerk under the appellant for sometime with a salary of Rs.400/- per month also finds no supporting document. Both RWs.2 and 4 similarly placed persons had to admit that they were not in the habit of issuing any appointment orders. That reduces the improbability in the testimony of A Ws.2 and 3 about their not having any documentary evidence to show that they have been employed by the appellant for working as such. The claimant No. 1, being the widow and claimant No. 2, the minor son, could not have done anything more than producing such material for consideration. That was sufficient to shift the onus on the appellant to discharge that although no appointment orders were being issued, there was no practice of appointing such persons called "mutta workers" to load and unload the goods in the premises and that it was being done only by the customers who come there for ginning purposes. RW. 1 the Proprietor appears to be ignorant in relation to the factory or its functioning. He did not even know the accident. His son was in charge of the factory actually. He was not examined. No staff member of the factory is examined in relation to such a practice. Exs. R. 1 to R.3, the attendance register, the wage register and the register of employment, patently omitted to mention the name of either the deceased or AWs.2 and 3 as having been employed in the factory of the appellant, But they were certified by the Factory Inspector only on May 19, 1983 after a week of the accident and the death of the deceased. No other document prior to the period covered by Exs.R. 1 to R.3 were produced to show that the documents were maintained by the employer in the regular course of business certified by the prescribed authorities. There was no explanation by RW. 1 as to why Exs.R. 1 to R.3 were not got certified prior to May 19, 1988. Therefore, the documents were mulcted with patent suspicion in the conduct of RW. 1 and the Factory Inspector to create such documents after the accident and the death of the deceased. The testimony of RW.1 is a betrayal of the responsibility and the knowledge about the maintenance of necessary records by the Factory like the appellant in dealing with such a matter. RWs.2 and 3 are found to be tutored witnesses in the manner in which they consistently deposed that they were also working like the deceased in several mills or factories including the factory of the appellant not being actually employed by the appellant and in fact employed by the other factories. No document is also produced in regard to that to draw any inference. There is nothing to indicate that RWs.2 and 3 were actually working at the relevant time like the deceased to draw similar inferences. RW.4 is a similarly placed person like RW.1 professing that there was no practice of appointing workers like "mutta workers" in such mills except to be engaged by the customers who come to the factory for ginning. Therefore, both RWs.1 and 4 are the friends in distress and should naturally support each other and in the absence of any supporting material even

for RW.4 his lending hand to the appellant cannot be lightly ignored. In such a situation, the learned Commissioner was confronted with two sets of probabilities to know which was nearer truth and which was more probable. It is legion that persons in charge of such factories or mills are capable of manipulating the records to overcome statutory obligations under Labour Law and Industrial Law or to influence the authorities enforcing the same to overcome such difficulties. This may be one such case in the nature of the evidence available although it cannot be positively recorded to that effect when we are dealing with only probabilities. In addition to the reasons of the Learned Commissioner, some more can be supplemented as of a reasonable and prudent man that when an accident occurs within the mills where a labourer or a mutta worker dies, the conduct of the Proprietor or the staff who are incharge cannot be that of RW. 1 as it is sure to lead to, complications, as it has happened in the present case. It is evident from the evidence of RW. 1 that he has not even raised his little finger to do anything in regard to such an accident except to secure the documents like Exs. R.1 to R.3 with the aid of the Factory Inspector to get a certification without any plausible explanation as to why it was not done in the natural course. There is nothing to indicate that it was in the month of May that such documents were to be certified by the Factory Inspector. The Factory Inspector was not examined to remove such a staring suspicion or to show that it was done in the regular course of business and in a routine manner. It is not understandable as how the Factory Inspector did not take any action although an accident occurred within the factory premises leading to the death of a worker which leads to an inference that he aided the appellant to certify Exs. R.1 to R.3 in such clouded circumstances hanging on the appellant. These circumstances naturally influenced the learned Commissioner to draw an inference in regard to the probability that the deceased was actually working under the appellant when he suffered the accident leading to his death and for no other reason. The learned Commissioner is totally justified in finding that the appellant did not take any pains to prove that the deceased was employed under M/s. Lakshmi Cotton Enterprises although it was possible to prove it. Because no business can go without documents, there is not even a scrap of paper produced by the appellant to show that M/s. Lakshmi Cotton Enterprises or any other such mill was the customer of the appellant. Although the appellant examined RW.4, a similar placed Proprietor as that of RW. 1, there was no reason for not examining anybody on behalf of M/s. Lakshmi Cotton Enterprises to show that on that day actually the deceased was working with that cotton enterprises. Therefore, the initial onus of proof on the claimants after all the materials were produced before the learned Commissioner, were sufficient to examine the probabilities to draw the inference that the case of the claimants was more probable than that of the appellant. Not only the finding of the learned Commissioner was right and justified with such materials but also the manner in which they are dealt with are appreciable which requires no interference. Even presuming that there is no sufficient evidence to draw such an inference in favour of the claimants, it was not a case of no evidence. The totality of the materials leading to the natural

inferences as above will by themselves assume the character of evidence to record a finding and that has been done by the learned Commissioner. In such a situation not only this Court should be slow in interfering with such a finding but also would not be justified in upsetting it.

10. The contention of the learned Counsel for the claimants that the matter comes u/s 12 of the Act is totally beyond the facts and circumstances of this case. It is nobody's case that either the Lakshmi Cotton Enterprises was the contractor employed by the appellant or that the deceased was engaged through such a contractor by the appellant.

11. In the result, the appeal lacking merit is dismissed. In the peculiar circumstances of the case, there shall be no order as to costs.