

(2006) 03 UK CK 0008
In the Uttarakhand High Court

Ratan Singh Mehar

APPELLANT

Vs

Upkhand Adhikari, Vidyut Vitran Upkhand Pratham and
Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 30, 4, 4A

Citation : (2006) 2 ACC 493 : (2007) ACJ 69 : (2006) 3 UC 1698 : (2006) 1 UD 489

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This appeal preferred u/s 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 20.9.1999, passed by the Workmen's Compensation Commissioner, Pithoragarh in Workmen Compensation Case No. 22 of 1997 (36 of 1997), whereby the claim of appellant has been dismissed by the said authority.

2. Brief facts of the case are that on 13.6.1995, the appellant who was working as a lineman with the U.P. State Electricity Board, was repairing the electricity line in Malla Garkha, District Pithoragarh. While he was discharging his duties, he got injured due to the electric current shock and had to remain admitted in the hospital. Due to the injuries received in the accident, his left hand was amputated below elbow. As such, he became permanently disabled. The claimant-appellant was 53 years old at the time of the accident. His salary was Rs. 4,255.80 per month. No compensation was paid to him on account of injuries suffered by him, as such, he claimed compensation to the tune of Rs. 1,07,010 under the Workmen's Compensation Act, 1923, treating Rs. 1,000 as the monthly pay and thus calculating compensation at Rs. 71,340, penalty of Rs. 35,670 and interest at 6 per cent thereon.

3. The respondents contested the claim petition, alleging that the claimant

himself was negligent in discharging his duties, as he failed to intimate about the fault to the higher authorities.

4. Learned Workmen's Compensation Commissioner, framed following issues:

(1) Whether the claimant, during the course of employment with the respondents, got injuries alleged by him?

(2) Whether the injuries received by the claimant were due to his own fault?

(3) Whether the respondent had given any compensation or relief to the claimant? If so, its effect?

(4) Whether the claimant is entitled to compensation? If so, to what amount?

5. Workmen's Compensation Commissioner, after recording the evidence and hearing the parties, arrived at the conclusion that the claimant did suffer injuries, alleged by him during the course of his employment but claim petition was rejected on the ground that the claimant himself was negligent in performing his duties as a lineman and the department cannot be held responsible for it. Aggrieved by the order of the said authority, this appeal has been preferred.

6. I heard the learned Counsel for the parties and perused the record.

7. From the evidence on record, it is clear that it is admitted to the parties that claimant was in the employment with the respondent and working as a lineman on the date of the accident. It is also not denied that the claimant suffered injuries and his hand got amputated. The only dispute remains as to whether the claimant was himself at fault for the injuries received by him and is the department not liable to pay the compensation?

8. From the above facts, it is clear that claimant being lineman was a workman. It is also evident from the above facts that he received injuries in the course of his employment. The ground on which his claim was refused is negligence on his part and disregard to the safety measures required to be adopted by him. Sub-section (1) of Section 3 of the Workmen's Compensation Act, 1923, reads as under:

3. Employer's liability for compensation.-(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-

- (i) the workman having been at the time thereof under the influence of drink or drugs, or
- (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

On behalf of the respondents, it is argued that since petitioner himself was at fault as such he is not entitled to compensation. Clause (b), quoted above, saves employer from the liability to pay compensation only in the cases where either the workman was working under the influence of drink or drug (which is not the case here) or wilful disobedience of the workman to any order expressly given, or the wilful removal or disregard by the workman of any safety guard. It is Clauses (ii) and (iii) of Clause (b) of Sub-section (1), quoted above, of which defence was taken by the employer. In both the cases, it is wilful disobedience or wilful disregard on the part of the workman, which can exempt employer from the liability to pay the compensation. But from the evidence on record, it cannot be said if it was wilful disregard or disobedience by the workman when he had gone to repair the fault in the electric line. No doubt, the lineman could have observed better safety measures and he could have avoided the accident. But merely for the reason that a lineman who was working in rural area, had failed to inform the higher authorities before going to repair the fault, cannot be said to have committed wilful disobedience or wilful disregard of safety measures. In the opinion of this court, mere negligence cannot be said to be "wilful disobedience" or "wilful disregard".

9. In the circumstances, this court is of the view that Workmen's Compensation Commissioner, has not only taken an in-humanitarian approach but also failed to appreciate the real ground reality in which a lineman works. For the reasons in the preceding para this court further finds that the impugned judgment and order suffers from the error of law as well as error of fact.

10. Now comes the question as to the amount of compensation. In view of Sub-clause (b) of Section 4 read with Schedule IV of the Workmen's Compensation Act, 1923, the claimant being 53 years old is entitled to factor of 142.68 on assumed salary of Rs. 1,000 per month. As such, he is entitled to Rs. 1,000 x 142.68 x 50/100 = Rs. 71,340. However, this court does not see any reason to award penalty claimed.

11. Accordingly, for the reasons as discussed above, the appeal is allowed and impugned order dated 20.9.1999 passed by Workmen's Compensation Commissioner, Pithoragarh, is set aside. The claim of the appellant (claimant) is allowed to the above extent. The claimant shall be paid compensation to the tune of Rs. 71,340 by the respondent employer with 6 per cent interest thereon from the date of application, i.e., 15.12.1996. If the amount awarded is not paid

within one month, respondents shall be liable to pay 12 per cent interest per annum as provided under Sub-section (3) of Section 4-A of Workmen's Compensation Act, 1923.

No order as to costs.