

(1993) 09 GUJ CK 0027
In the Gujarat High Court
Case No : First Appeal No. 1293 of 1985

Samuben and Others

APPELLANT

Vs

Patel Industries and Another

RESPONDENT

Date of Decision : 02-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Compensation Act, 1923 — Section 30, 4A(2), 8, 8(1)

Citation : (1995) ACJ 75 : (1994) 68 FLR 938 : (1994) 1 GLR 253 : (1994) 2 LLJ 981

Hon'ble Judges : Akbar Nanjibhai Divecha, J

Bench : Single Bench

Judgement

Divecha, J.—The decision rendered by the learned Civil Judge (SD.) at Baroda acting as the Commissioner for Workmen's Compensation on 28th December, 1984 in Workmen's compensation Case No. 9 of 1983 is under challenge in this appeal at the instance of the original applicants. Thereby the Trial Forum partly accepted the application of the applicants for compensation and awarded Rs. 4,000/- to them after deducting Rs. 14,000/- stated to have been paid to them by the respondents from the total compensation of Rs. 18,000/- fixed by the Trial Forum.

2. The facts giving rise to this appeal are not many and not much in dispute. One Bhalubhai Rathva was stated to be a workman working under the respondents. He is stated to have met with some accident on 19th January, 1982 and sustained injuries. Later on he succumbed to his injuries. He was working as a labourer on the daily wage basis and his wage per day was in the sum of Rs. 8.50 ps. His monthly pay was in the sum of Rs. 255. Applicant No. 1 is the widow of the deceased workman and applicants Nos. 2 to 5 were his children and 6 and 7 his parents. They claimed compensation from the respondents paid no compensation to them as claimed by them. Thereupon they approached the Trial Forum by means of their application claiming compensation in the sum of Rs. 18,000/- and the penalty in the sum of Rs. 9,000/- They in all claimed Rs.

27,000/- from the respondents. Their case came to be registered as Workmen's Compensation Case No. 9 of 1983. The respondents filed their respective replies and resisted the application on various grounds. They inter alia contended that the deceased was not their workman but was only a guest of some workman and he met with his death on account of some accident. According to the respondents, they were not liable to the applicants for death of their predecessor-in-title as he was not their workman. It was also their case that they paid Rs. 14,000/- to applicant No. 1 herein by way of compensation for the death of her husband on compassionate and humanitarian grounds. On the aforesaid pleadings of the parties, the necessary points for determination were raised. After recording evidence and hearing the parties, by its judgment and order passed on 28th December, 1984 in Workmen's Compensation Case No. 9 of 1983, the Trial Forum accepted the application for compensation in the sum of Rs. 18,000/- without any penalty. The Trial Forum also came to the conclusion that respondents paid Rs. 14,000/- to applicant No. 1 herein towards part compensation and thereupon the respondents herein were ordered to pay the balance amount of compensation in the sum of Rs. 4,000/- with interest at the rate of 6% per annum from the date of the order till deposit of that amount. This decision aggrieved the appellants to a certain extent. They have therefore invoked the appellate jurisdiction of this Court by means of this appeal u/s 30 of the Workmen's Compensation Act, 1923 (the Act" for brief).

3. Shri Mohit Shah for the appellants has invited my attention to Section 8 of the Act in support of his submission that the version of payment of Rs. 14,000/- to appellant No. 1 by or on behalf of the respondents could not have been accepted by the Trial Forum in view of the salutary statutory provision contained therein. According to Shri Mohit Shah for the appellants, even otherwise the evidence regarding payment of Rs. 14,000/- by or on behalf of the respondents to appellant No. 1 is far from satisfactory and deserves to be rejected. As against this, Shri J. G. Shah for the respondents has urged that the Trial Forum has made no mistake in accepting the payment made to appellant No. 1 in the sum of Rs. 14,000/- towards the compensation for the death of her husband, Shri J. G. Shah for the respondents has also urged that such payment could have been made in view of Section 4A(2) of the Act.

4. It would be quite proper to look at the relevant provisions contained in Section 8 of the Act. Sub-section (1) thereof is material for the purpose. It reads :

"No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation :

Provided that, in the case of a deceased workman, an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not

exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer."

5. It becomes clear from a bare perusal thereof that no compensation has to be paid in respect of a workman whose injury has resulted in death except by deposit with the Commissioner and no such payment made directly by an employer shall be deemed to be a payment of compensation. This statutory provision prohibits an employer from making any payment of compensation in respect of the death of a workman directly to his heirs and legal representatives or to any of them. What the employer has to do is to deposit the amount of compensation with the Commissioner for the purpose. It has also been provided therein that any direct payment made contrary to the said statutory provision would not be deemed to be any payment.

6. This statutory provision is quite clear on the point. It is designed to protect the heirs and legal representatives of the deceased workman against any kind of exploitation or fraud likely to be practised on them by or on behalf of the employer or any third party. It cannot be gainsaid that workmen in our country are by and large illiterate. Their heirs and legal representatives are all the more so. They might not be aware of the amount of compensation they would be entitled to on the death of the bread-winner in the family. At times an unscrupulous employer would like to exploit the situation by paying a meagre sum to any of the heirs of the deceased workman. An unscrupulous heir also might bargain with the employer and deprive the other heirs and legal representatives of the deceased workman of their due share in the compensation, in order to avoid any such kind of mischief making on the part of the employer or any of the heirs and legal representatives of the deceased or any third party, the legislature in its wisdom has devised security of payment of compensation to the heirs and legal representatives of the deceased workman. The only advance payment of less than Rs. 100. Such advance payment in the sum of less than Rs. 100 can be paid by the employer to the heirs and legal representatives of the workman or to any of them. Subject to payment of this small advance money, the employer is not authorised or empowered or entitled to make payment of compensation for the death of a workman otherwise than in accordance with Section 8 of the Act.

7. It is a settled principle of law that, when a statute requires anything to be done in a particular manner, it has to be done only in that manner, it has to be done only in that manner and in no other manner. Section 8 of the Act requires the employer to make payment of the compensation for the death of his workman by deposit of the amount thereof with the Commissioner. He has to make payment only in that manner. In order to make the position doubly sure, the legislature has made it clear that any payment of compensation for the death of a workman otherwise than by deposit with the Commissioner would be deemed to be no payment. In that view of the matter, the conclusion reached by the Trial Forum regarding payment of Rs. 14,000/- to appellant No. 1 herein

could not have been accepted as a valid payment.

8. In view of this position of law, it is not necessary for me to dilate on whether or not the respondents have been able to prove at trial payment of Rs. 14,000/- to appellant No. 1 herein.

9. Shri J. G. Shah for the respondents has urged that the payment of Rs. 14,000/- to appellant No. 1 was in the nature of provisional payment u/s 4A(2) of the Act to the extent the liability for the death of the husband of appellant No. 1 herein was accepted on compassionate and humanitarian grounds. In order to appreciate this submission urged by provisions of sub-section (2) of Section 4A deserves to be looked at it reads :

"In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim."

A bare perusal of the aforesaid statutory provision makes it clear that, in the first place, the employer has to accept the extent of his liability for payment of compensation and on that basis he has to make payment either to the workman or to deposit with the Commissioner. Again, the requirement of the aforesaid statutory provision is payment to the workman and not to any other person including his heirs and legal representatives. It appears that Section 4A(2) of the Act takes within its sweep the case where the workman has not breathed his last on account of the accident met with by him in the course of his employment. The workman defined in Section 2(1)(n) of the Act would obviously not include any of his heirs and legal representatives.

10. In the present case the payment of Rs. 14,000/- alleged to have been made by the respondents of the death of the deceased was certainly not to the workman. Besides, as transpiring from the replies, the respondents did not accept any liability whatsoever for the death of the deceased. They went on to say that the deceased was never their workman in that view of the matter, no resort can be permitted to be made to Section 4A(2) of the Act with respect to the so-called payment of Rs. 14,000/- to appellant No. 1 towards compensation for the death of the deceased.

11. Shri Mohit Shah for the appellants is also justified in making a grievance that the Trial Forum was not right not imposing the penalty on the respondents for not making timely payment of compensation amount. As pointed out hereinabove, the so-called payment of Rs. 14,000/- by the respondents to appellant No. 1 cannot be deemed to be payment in view of Section 8 of the Act. In that view of the matter, no compensation whatsoever can be said to have been paid by the respondents to the appellants or any of them. That would result in imposition of penalty in view of Section 4A(3) of the Act.

12. It cannot be gainsaid that the appellants lost heir bread-winner in the family. Their life would have been rendered full of miseries for want of regular income from the bread-winner who breathed his last on account of his meeting with the unfortunate accident course of his employment. Denial of timely payment of compensation would certainly add to their miseries. In that view of the matter, the maximum penalty amount under the Act deserves to be imposed on the respondents and awarded to the appellants. The maximum amount of penalty permissible under the Act is 50% of the compensation amount. The respondents deserve to be imposed with the penalty of Rs. 9,000/- for non-payment of compensation in time.

13. Shri J. G. Shah for the respondents has then urged that the respondents are not liable for compensation to the appellants as the deceased was not their workman. I find not substance in the submission for two reasons. In the first place, the lower Forum has appreciated the evidence on record and has come to the conclusion that the deceased was a workmen of the respondents. I see no reason to interfere with this finding recorded by the lower Forum. Besides, the respondents have not challenged this finding of fact recorded by the lower forum by filing either an appeal or cross-objections to this appeal. I am not shown how Order 41 Rule 22 of the Code of Civil Procedure, 1908 will govern the present proceedings so that a finding recorded by the lower forum can be challenged without filing any appeal or any cross-objections.

14. In the result, this appeal is accepted. The impugned decision rendered by the Trial Forum is modified. The respondents are directed to pay to the appellants by deposit with the Trial Forum on or before 30th October, 1993 in all Rs. 27,000/- with interest at the rate of 6% per annum from the date of their application till deposit thereof if they have deposited that amount in accordance with the Act. On deposit of the amount by the respondents pursuant to this judgment, the Trial Forum is directed to invest that amount in a fixed deposit for a period of 3 years in the first instance in any nationalised bank in the names of the applicants separately after determining each applicant's share therein. There shall be no order as to costs on the facts and in the circumstances of the case.