

(2013) 08 BOM CK 0157
In the Bombay High Court
Case No : First Appeal No. 211 of 2007

Shri Ramji and Smt. Manjulabai

APPELLANT

Vs

The Commissioner, Shri Rajkumar, Shri Krishnakumar and
The Orient Insurance Co.

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Evidence Act, 1872 — Section 165

Workmens Compensation Act, 1923 — Section 10, 2(1)(d), 22

Citation : (2013) 6 ALLMR 148 : (2013) 139 FLR 1018

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : I.S. Charlewar, for the Appellant; V.R. Mundra, Advocate for Respondent No. 2 and Shri A.M. Quazi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—By this present appeal, the appellants raised question about the validity and legality of the impugned judgment and order dated 03/08/2004 passed by learned Commissioner, Labour Court, Bhandara under the Workmen's Compensation Act in F.W.C.A. Case No. 9 of 1997.

Facts briefly stated as under-

Deceased Shriram Kahalkar was the son of original applicants-appellants. They had claimed compensation under the Workmen's Compensation Act on the ground that they are dependents of the deceased Shriram Kahalkar.

2. Learned Commissioner held that the applicants failed to prove that the salutary fact that applicants (present appellants) were dependents of the deceased workman and that deceased Shriram died by accident arising out of and in the course of employment with Rajkumar Prataprai Paryani. Learned Advocate on behalf of the appellants strongly relied upon averments made in the application u/s 22 of the Workmen's Compensation Act, 1923 pleading that the

deceased was only earning member of the family of the applicants and that the applicants are only his dependents and legal heirs of deceased Shriram, who died on 28/02/1997 in the accident which occurred out of and in the course of employment with Rajkumar Prataprai Paryani.

3. The appeal was admitted on the substantial question of law mentioned in the order dated 16/04/2007 as below-

Whether the Commissioner, Workmen's Compensation was justified in holding that the applicants were not dependent on the earning of the workman at the time of his death, when the aforesaid fact was specifically pleaded by the appellants in the application u/s 10 of the Workmen's Compensation Act and the same was not denied by the respondents in their written statement?

The question formulated prima facie appears as compound question, particularly in the present case there is no dispute that there was a pleading by the appellants that they were dependent on the earning of the workman at the time of his death. According to learned Advocate for appellant this averment was not denied on behalf of the respondents in their written statement. Learned Advocate for the appellants made a reference to the ruling in Raziyaabee w/o. Shaikh Sattar v. Surrendra S/o. Shivajirao Sangle, dated 17/10/2011 in First Appeal No. 1146 of 2011 wherein this Court had considered the definition of dependent under the workmen's Compensation Act in Section 2(1)(d), the meaning of dependent is mentioned to include widow, minor son unmarried daughter or a widowed mother and if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter, who has attained the age of 18 years and who is infirm, parents were covered in clause (iii) (b) of appellant other than the widowed mother. Clause (iii) qualified the applicability of the definition "dependent" to appellants unless it is in evidence that they were wholly or in part dependent on the earning of the employee at the time of his death. This Court had thus considered that dependents-appellants from Clause (iii) are entitled to compensation once they prove that they fall under the definition of dependent.

4. Thus, the crux of the controversy is as to whether applicants led evidence in support of their pleadings to establish that they are as parents of the deceased workman or employee were either particularly or wholly dependent upon the deceased. Unfortunately, it appears that although there was a pleading and also an issue framed learned Advocate Shri Bombarde for applicants before the Labour Court did not bother to lead evidence as to primary averment which is a ground for application that applicants were dependent on the deceased workman.

5. On behalf of the respondents, it is contended that when there was no evidence on the basic facts that applicants were dependent of the deceased workman that they would not be entitled to any compensation under the Workman Compensation Act. Considering this that learned Advocate who representing the applicants was negligent to lead essential evidence as to basic facts and

applicants were illiterate and more than 80 years old senior citizen. It is submitted that they ought not to suffer on account of omission on the part of their Advocate, who was expected to be well versed and ought to have been conscious of the issues involved in the application proceedings. On principle that litigant cannot be made to suffer on account of negligence on the part of Advocate to lead evidence as to basic facts, I think parties ought to be given opportunity to lead evidence as to basic facts pleaded. In my opinion, learned Commissioner could have used power u/s 165 of the Indian Evidence Act, 1872 to obtain proper proof of relevant facts pleaded in the application by asking relevant question or by ordering production of document in support of the pleading. But unfortunately this was not done though Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Judge (Commissioner in this case) to put any question at any time to any witness or to the parties about any fact to discover the truth so as to safeguard the interest of justice. The object of the proceedings particularly which are under the beneficial legislation like Workmen's Compensation Act, learned Commissioner could have used his judicial discretion to put questions as empowered by law and as suggested above so as to ensure that truth must prevail for giving justice to applicants, who are old aged more than 80 years persons were before him. This could have been done instead of adopting an easy short-cut to dismiss the application on the pretext of want of evidence although basic facts were pleaded and issues were framed on the basis of those facts. Learned Advocate Mr. Mundra on behalf of respondent No. 4 submitted that there was no substantial question of law in the present appeal as no evidence was led as to who are dependent on the deceased workman. He made a reference to a ruling in The Management, Boys Town Society, Tirumangalam, represented by its Management, Boys Town Society Vs. V. Palani and Another, as also a ruling in Dhan Singh and Others Vs. PEPSU Road Transport Corpn., . According to learned Advocate on behalf of the respondent No. 4, the applicants ought to have proved that they were dependent on the deceased workman in order to succeed in the proceedings. There can be no dispute with the proposition that facts pleaded in the application ought to be proved according to law. In the present case as already observed, I think it was duty of Advocate representing old aged parents of the deceased workman to take care to oversee that fact pleaded is brought on record by evidence of parents. An illiterate litigants, who are not expected to know niceties of law were not properly assisted or represented by Advocate, who is expected to possess sound knowledge of law and who is also expected to protect interest of his old aged clients. On account of his failure in my opinion, old aged applicants ought not to suffer in the peculiar facts and circumstances of the case. I, therefore, intend to quash and set aside the impugned judgment and order and to remand the proceedings back to the learned Commissioner under the Workmen's Compensation Act with a direction to offer legal aid of a competent Advocate, if necessary for the poor old aged senior citizens. Learned Commissioner shall endeavour to obtain relevant information in respect of basic facts pleaded in the application, which are in issue so as to give opportunity of leading evidence to

the rival parties and then decide the controversy in accordance with law and on its own merit. Hence, I pass the following order.

ORDER

6. Appeal is allowed.

7. The impugned judgment and order is quashed and set aside.

8. The proceedings are remanded back to the learned Commissioner under the Workmen's Compensation Act with a direction to offer legal aid of a competent Advocate to old aged senior citizen-applicants, if necessary for the old aged poor applicants.

9. Learned Commissioner shall endeavour to obtain relevant information in respect of a basic facts pleaded in the application in accordance with law and give opportunity of leading evidence to the parties and then decide the controversy in accordance with law and on its own merit.

10. Parties are directed to remain present before the learned Commissioner on 16/09/2013. Record and proceedings be sent back.