

(1998) 03 KAR CK 0005

In the Karnataka High Court

Case No : Miscellaneous First Appeal No"s. 1371 of 1994 and 1336 of 1998

Smt. Mahaboobi and Others

APPELLANT

Vs

Abdul Rashid and Others

RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:

Workmens Compensation Act, 1923 — Section 10

Citation : (1998) 2 ACC 701 : (2000) ACJ 493 : (1999) 81 FLR 116 : (1998) ILR (Kar) 3811 : (1998) 4 KarLJ 406 : (1999) 2 LLJ 1360

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri Chidananda for Sri Ramesh B. Anneppannavar and Sri Umesh R. Malimath, for the Appellant;

Judgement

1. These two appeals are interconnected. MFA No. 1371 of 1994 is filed by the claimants before the Commissioner for Workmen Compensation and Labour Welfare Officer, Bijapur, for enhancement of the compensation whereas connected MFA No. 1336 of 1998 is filed by the respondent 1 to absolve the liability under the impugned award. In both the appeals the common award dated 30-9-1993 in Case No. WCA:SR: 105 of 1992 is under challenge.

2. For the purpose of convenience, the parties hereto are referred to as they occurred in the first appeal i.e., MFA No. 1371 of 1994.

3. In the first appeal the appellants are represented by the learned Counsel Sri Ramesh B. Anneppannavar whereas the respondents are represented by the learned Counsel, Sri Umesh R. Malimath. The second appeal filed by the respondent 1 since in the initial stage of issuance of notice to the respondents, Sri Ramesh B. Anneppannavar is directed to take notice for the respondents-claimants. Sri Umesh B. Malimath represented the appellant in the second appeal. The respondents 8 to 10 in the second appeal are given up by the learned Counsel for the respondent for the reason that they are not the necessary parties. I heard the learned Counsel for the respective parties.

4. The facts relevant for our purpose are as hereunder:

That one Saleem, the son of the appellant 1 and husband of the appellant 2 and further the father of the appellants 3 to 7, died during the course of employment under the respondent 1. He died due to electrocution. The appellants herein had filed a claim petition before the Commissioner for Workmen Compensation and Labour Welfare Officer, Bijapur, (henceforth in brief as "Commissioner") in case No. WCA:SR:105 of 1992, claiming a compensation of Rs. 5,00,000.00 on the basis that at the time of death of Saleem he was drawing a sum of Rs. 3,000/- p.m. under the respondent 1 and that at the time of death he was 30 years old. Both sides adduced respective side of the evidence and based on the evidence on record, the Commissioner had awarded a compensation of Rs. 38,982.00 together with interest at 6% p.m. from the date of accident and further imposed a fine of Rs. 500.00 for filing of the claim petition.

5. The first appeal is filed by the appellants-claimants for enhancement of the compensation on the ground that the Commissioner had taken the daily wage of the deceased at Rs. 18/- per day and thus awarded the compensation to the tune of Rs. 38,892.00, whereas the second appeal is filed by the respondent 1 for avoidance of the liability on the ground that the deceased was not at all an employee under him and the oil mill in question was burnt down much earlier to the date of incident of the electrocution.

6. The learned Counsel for the appellants-claimants, Sri Chidananda appearing along with Sri Ramesh B. Anneppannavar, argued that even if the appellants-claimants could not produce evidence to show that the deceased was drawing a sum of Rs. 3,000/- p.m. in the absence of any evidence produced by the other side, the Commissioner would have fallen back upon the Minimum Wages Act to hold that the deceased was earning at the rate of Rs. 26.80 per day and thus earning at that rate for 26 days to workout at Rs. 696.80 p.m. and further worked out at 40% thereof or Rs. 278.72 and by employing the factor: 207.98, (the age of the deceased being 30) with reference to the Schedule IV of the Workmen Compensation Act and accordingly arrived at Rs. 57,968.19 as the compensation awardable to the appellants. Therefore, he prayed that the impugned award passed by the Commissioner be suitably modified in allowing the appeal.

7. While advertng to the appeal preferred by the respondent 1-employer, Sri Chidananda argued that when the very appeal filed by the respondent 1 was not accompanied with the deposit certificate evidencing the deposit of the sum awarded under the impugned award, the question of entertaining the appeal by this Court did not arise at all. According to him, the appeal is liable to be dismissed on that short ground alone without going into the merits.

8. The learned Counsel for the respondent 1-employer, Sri Umesh R. Malimath on the other hand counter argued that the finding of the Commissioner as to the daily wage of the deceased being finding of fact cannot be agitated before this

Court in the instant appeal and as such the question of entertaining the first appeal filed by the claimants by this Court does not arise at all. Hence his argument is that the appeal of the claimants has to be rejected on the ground of maintainability.

9. Now the points that arise for my consideration in these two appeals are as follows:

(i) Whether the finding as to the wage of the deceased is a substantial question of law or not.

(ii) Whether there was justification on the part of the Commissioner to compute the compensation at Rs. 38,892.00 and whether the same is liable to be enhanced and if so to what extent?

(iii) Whether the appeal in MFA No. 1336 of 1998 filed by the respondent 1-employer is liable to be rejected for want of certificate of deposit of compensation awarded in the impugned award or not.

10. The points No. (i) and (ii) are interconnected. Hence, I find it appropriate to take both of them together.

11. It is not in dispute that both the appellants-claimants on the one side and the respondent 1-employer on the other did not produce any material evidence in support of respective contentions as to the daily wage of the deceased, Saleem. When the appellants-claimants had adduced only oral evidence, in support of such a contention, the respondent 1-employer did not produce any evidence except the oral evidence to say that the respondent 1-employer was paid below Rs. 20/-. It is to be pointed out here that the proof as to the daily wage of the deceased was in the hands of the respondent 1-employer because he had admitted that the deceased was working as a "Maistry" under him. When both the parties before the Commissioner did not adduce any evidence as to the daily wage that was being earned by the deceased, necessarily the Commissioner would have fallen back upon the Minimum Wages Act. The learned Counsel for the appellants-claimants, Sri Chidananda had produced before me a Gazette Notification dated 28-10-1991 issued by the State of Karnataka bearing No. SWL 77 LMW 87, Bangalore, issued under the Minimum Wages Act, wherein for Range-1 (xxx) the minimum wage in respect of the workers working in the oil mill is shown as Rs. 26.80 and the same is referable to the establishments situated in Bangalore Agglomeration area and the District headquarters. Admittedly in the instant case, the place of employment is in Bijapur District headquarters and as such obviously the minimum wage -applicable to the case of the deceased is Rs. 26.80 particularly when the said notification came into effect from 1-11-1991, whereas the incident in question had occurred on 9-6-1992. Therefore, his argument as that the compensation to be awarded by the Commissioner is Rs. 57,968.18 and not Rs. 38,892.00 as worked out as above by the Commissioner. I have carefully considered that the said part of the argument advanced and also worked out myself as to the sum of compensation awardable.

That, I did in this manner as the Commissioner had worked out i.e., 26.80 x 26 days x Rel. Factor : 207.98. Hence, I am also of the view that the Commissioner would have awarded the said sum of Rs. 57,968.18 as compensation to the appellants. In the given circumstances, when the Commissioner would have fallen back upon the Minimum Wages Act, for the purpose of deciding the rate of earning at the point of time of accident when the accident injuries was suffered by the deceased, I do find that there is involved substantial question of law in the instant appeal before this Court. Therefore, I have got no hesitation to reject the argument of the learned Counsel for the respondent 1 that there is no substantial question of law involved in the instant appeal. Therefore, when I answer the point No. (i) in the positive and in favour of the appellant-claimants, I answer the first part of the second question in the negative; I also answer the second part of the second question in the positive, both in favour of the appellants-claimants holding that the appellants are entitled to for Rs. 58,968.18 by way of compensation from the respondent 1.

12. Now I turn to the point No. (in) as above i.e., merit of the appeal filed by the respondent 1-employer in MFA No. 1336 of 1998. I have to point out at the outset that the said appeal has not been filed along with the certificate of deposit of the sum awarded under the impugned award. It has been held by this Court in a decision in United India Insurance Co. Ltd. Vs. Kashimsab and others, , that when the appeal is not accompanied with the certificate of deposit, the appeal is not maintainable. By following the said decision, I am of the view that the instant appeal filed by the respondent 1-employer is not maintainable and that on that short ground alone, the same is liable to be dismissed. In the result, I pass the following:

ORDER

(i) The finding of the Commissioner that the respondent 1-owner was liable to pay the compensation u/s 10 of the Workmen Compensation Act is upheld, however, the award of compensation of Rs. 38,892.00 is modified to Rs. 57,968.18 or Rs, 57.968.00 together with interest at 6% thereof payable from the date of accident i.e., 9-6-1992.

(ii) The award of fine of Rs. 500/- awarded by the Commissioner in passing the impugned award is also upheld.

(iii) The first appeal of the appellants-claimants stands allowed in part whereas the second appeal of the respondent 1-employer stands dismissed. No cost.

(iv) The respondent 1-employer is directed to deposit the above sum together with interest at 6% p.a. before the Commissioner within a period of 8 weeks from this day.