
(1990) 03 GUJ CK 0006
In the Gujarat High Court
Case No : First Appeal No. 1664 of 1988

State of Gujarat

APPELLANT

Vs

Rajendra Khodabhai Deshdia and Others

RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 4, 4(1), 4(1)(C)

Citation : (1991) 2 ACC 89 : (1991) ACJ 638 : (1991) 63 FLR 854 : (1991) 1 GLR 42 : (1995) 3 LLJ 211

Hon'ble Judges : V.H. Bhairavia, J;A.P. Ravani, J

Bench : Division Bench

Advocate : D.B. Desai, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

1. Bhairavia, J: Is an employee of the State Government, being a Civil servant, not covered by the provisions of the Workmen's Compensation Act, 1923? Even when earning of a workman may increase after he suffers an accident would he be entitled to claim compensation from the employer? These are some of the questions which have arisen in this appeal u/s 30 of the Workmen's Compensation Act, 1923 filed by the employer-State of Gujarat. Respondent workman was serving as forest guard. On May 14, 1984 while on duty he saw a matador vehicle loaded with logs of wood. As part of his duty to safeguard the forest wood he intercepted the matador and tried to detain it. But he could not. Hence he pursued the matador and over reached the same. On being questioned, the inmates of the matador got angry and one of them assaulted the workman and inflicted sword blow on his right hand. He was removed to Civil Hospital at Ahmedabad and was required to undergo treatment for some time. He was ultimately cured, but with some impairment in his right hand. Below the wrist of his right hand he lost some functional powers. Doctor certified that the workman had suffered permanent partial disability to the extent of 40 per cent. The applicant-workman served a notice dated January 30, 1986 upon the employer

the State of Gujarat and demanded an amount of Rs. 75,000/- as and by way of compensation. The request was not acceded to by the State Government. Hence the workman filed application for compensation. The appellant-State Government resisted the same on facts as well as on law points.

2. The Commissioner for Workmen's Compensation came to the conclusion that the workman was entitled to receive compensation of Rs. 14,960/- together with interest at the rate of 6% and was also entitled to claim penalty to the extent of 30% of the amount of compensation awarded. The Commissioner inter alia held that the appellant-employer had remained negligent in making payment of compensation amount and hence imposed penalty as stated above. In short, it was directed that the workman be paid an amount of Rs. 14,960/- with 6% interest and an amount of Rs. 4,448/- (being the amount of 30% of compensation amount) within three months failing which the amount of penalty was required to be paid with 6% interest. The appellant-employer has felt aggrieved by the aforesaid judgment and award and has filed this appeal.

3. Learned Counsel for the appellant has contended that the workman is a civil servant and therefore he is not covered by the definition of "workman" occurring in Section 2(n) of the Workmen's Compensation Act, 1923 (For short "the Act"). The term "workman" is defined in Section 2(n) of "the Act". It means, any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business. This definition is required to be interpreted in light of the object of the Act which is beneficial in character. "The Act" aims to protect the relatively weaker section of the society, its object is to do social justice and to provide for speedy and cheap forum for the workman and or his dependents for claiming compensation on account of unforeseen events (i.e. accident) arising out of and during the course of employment. "The Act" is required to be interpreted liberally so that the benefits sought to be conferred on the workmen or on the dependents of the workmen reach to them and the same are not lost on account of literal and pedantic approach in interpreting the provisions of "the Act".

4. Therefore a person in employment cannot be excluded from the definition of the term "workman" on the ground that the workman is a civil servant unless it is specifically so provided. To exclude a person from the scope of the definition of "workman" two conditions are required to be fulfilled. They are (1) the employment of the workman is of a casual nature; AND (2) he is not employed for the purpose of the employer's trade or business. In this view of the matter once it is shown that the workman has been employed for purposes of the trade or business of the employer, even though the employment be of a casual nature, the workman would fall within the definition of workman, provided, however other requisite conditions are also satisfied. There is nothing in the Act to show that workmen holding the posts in civil services of the State would be excluded from the purview of the definition of the term "workman".

5. It is an admitted position that the respondent workman was employed as

forest guard. In Schedule II of the Act, list of persons who, subject to the provisions of Section 2(1)(n) are included in the definition of "workman" is given. Clause 23 of the list reads as follows :

"(xxiii) employed in the tapping of Palm trees or the felling or logging of trees, or the transport of timber by inland water, or the control or extinguishing of forest fires."

The duty of the respondent-workman as forest guard would be to see that the forest is properly preserved and no part of the forest catches fires, and if it catches fire, the same is extinguished immediately. It will have to be presumed that a forest guard is also required to protect the forest wood and see that the wood is not cut and smuggled out of forest. No contrary evidence is led to show that this was not the duty of the applicant-workman who was employed as forest guard. Therefore, on the facts of the case there is no substance in the point raised by the appellant that the applicant was not a "workman" and was not covered by the provisions of the Act.

6. On the date of the accident or at any rate on the date of application the applicant was earning Rs. 750/- per month as and by way of wages. Thereafter he has been continued in employment, and his wages have been increased to Rs. 1085.50 per month. Therefore it is contended that instead of there being any diminution in the earning capacity of the workman, the workman has, as a matter of fact been in receipt of increased monetary benefits. Therefore, it should be held that despite partial physical impairment and functional loss below the wrist in the right hand, the workman is not entitled to claim any amount of compensation whatsoever. The point is sought to be buttressed by showing that he is receiving more amount of wages after the accidental injury. It is contended that even if he were to receive the same amount of wages he would not be entitled to claim any amount by way of compensation.

7. Reference is made to a decision of learned single Judge of the Punjab High Court in the case of Sewa Singh Ladha Singh v. Manager, Indian Hume Pipe Co. Ltd. reported in AIR 1964 Pun 512. The decision supports the contention raised by the appellant. In that case the workman was employed as a fitter. He met with an accident and received injury on his right leg due to which there was permanent deformity in his leg. Movement of his knee joints was restricted and his physical capacity was impaired to the extent of 50% permanently. However, the workman was employed on the same wages by the employer Company even after the accident. Therefore, the Commissioner for Workmen's Compensation rejected the application for compensation. On appeal, learned Single Judge of the Punjab High Court confirmed the view taken by the Commissioner for Workmen's Compensation holding that in case falling u/s 4(1)(c)(ii) of the Workmen's Compensation Act, 1923 (i.e. the cases of non-scheduled injuries) the Commissioner is required to examine as to whether the workman has actually suffered loss of earning capacity.

8. With utmost respect for the learned Single Judge of Punjab High Court it is difficult to agree with the view taken by him. The Commissioner for Workmen's Compensation is required to determine the loss of "earning capacity" resulting from the accidental injury. He is not required to determine the increase or decrease in earning of the workman. Earning of the workman may increase or decrease or it may remain the same even after the accident and the injuries suffered by the workman. Earning may increase on account of the general conditions of the employment or on account of the sympathies of the co-workers, who in a given case may support the co-worker on account of the physical disabilities suffered by him due to accidental injuries and may not allow him to suffer economic loss. But these are circumstances and factors which are irrelevant as far as the determination of loss of "earning capacity" is concerned. There need not be confusion between "earning" and "earning capacity". This aspect is discussed by the learned Single Judge of Bombay High Court in the case of Mangru Paiji v. M. Robinsons reported in 1978 LIC 1567 . The learned Single Judge of Bombay High Court has followed the Calcutta High Court in the case of Calcutta Licensed Measurers Bengal Chamber of Commerce Vs. Md. Hossain, . We are in agreement with the view taken by the learned Single Judge of Bombay High Court.

9. Under the provisions of the Workmen's Compensation Act, 1923 once it is proved by the workman:

(i) that he is a workman, and

(ii) that he has suffered injury by accident in the course of his employment the liability of the employer to pay compensation is established. If the injury received by the workman is a schedule injury, the minimum amount of compensation which the workman would be entitled to claim would be commensurate with the deemed loss of earning capacity as indicated in the schedule. In cases where the workman received non-scheduled injury, he will have to show by leading evidence as to what is the loss of earning capacity suffered by him on account of the accident. If the employer wants to prove that he was not liable to pay compensation, the onus lies on the employer to establish that there were circumstances in the case which confer immunity against the liability to pay compensation.

10. As far as the determination of amount of compensation is concerned, Section 4 of the Act makes provisions for the same. In case of death resulting from the injury, the amount of compensation is as indicated in first column of Schedule IV. In case of permanent total disability the amount is also indicated in first column of Schedule IV. Section 4(1)(c) of the Act deals with permanent partial disablement. Here again there are two types of injuries. Injuries specified in Schedule I to the Act and injuries which are not specified in the schedule. In both type of cases, basis of determination of amount of compensation is loss of earning capacity of the workman. Neither the "earning" nor the "earning capacity" of the workman is defined in the Act. As far as the injuries falling

within the scope of Section 4(1)(i) (i.e. Scheduled injuries) are concerned, the task of the workman is comparatively made easier by the legislature. In case of injuries specified in the schedule, the loss of "earning capacity" is fixed by creating deeming fiction. To claim the compensation commensurate with the percentage of loss of earning capacity fixed in the schedule, the workman is not required to lead any further evidence except to show that he has suffered injuries during the course of employment and that particular injury falls within the schedule. On proof of these facts, the workman would be entitled to claim compensation as fixed in the schedule. In case of non-schedule injury falling within the scope of Section 4(1)(c)(ii) of the Act the legislature has not fixed any percentage of loss of earning capacity by creating deeming fiction. Therefore, in such type of cases, it will be necessary for the workman to show by leading evidence that as a matter of fact he has suffered loss of earning capacity to a particular extent and that he will be entitled to compensation commensurate with the loss of earning capacity suffered by him. This is essentially a matter of inquiry involving examination of facts and to a great extent guess work to be made by the Commissioner and the Court. However in both type of cases of injuries the basic criterion for determination of amount of compensation is the same. i.e. the loss of earning capacity. In one type of cases, i.e. cases falling within the purview of Section 4(1)(c)(i) of the Act (scheduled injuries), the workman has an added advantage that the minimum loss of earning capacity is fixed by the statute by creating deeming fiction. In cases of non-Scheduled injuries falling within the scope of Section 4(1)(c)(ii) of the Act, the workman is required to prove the loss of earning capacity by leading appropriate evidence.

11. In this connection it needs to be noted that by providing "deemed loss" of earning capacity as indicated in Schedule I to the Act, the Legislature has fixed the rock bottom. To claim this much minimum compensation, the workman is not required to lead further evidence. In cases wherein the workman is in a position to establish that the percentage of the loss of earning capacity suffered by him is in far excess of the percentage fixed by the statute, he may lead evidence to establish the loss of earning capacity in excess of the percentage fixed by the statute. In such cases he would certainly be in a position to claim the amount of compensation commensurate with the percentage of loss of earning capacity proved by him. The criterion for determination of the amount of compensation is the loss of earning capacity. Simply because the Legislature provided for minimum amount of compensation by creating deeming fiction, the Legislature never intended to put the workman at a loss. As indicated hereinabove, "the Act" is required to be interpreted liberally so that the benefit reach to the workman or to the dependents in its fullest extent. The provisions of the Act cannot be interpreted so as to minimise or truncate the benefits to the workman or to his dependents.

12. Therefore, irrespective of the fact, as to whether the workman has suffered injuries specified in the schedule or injuries which are not specified in the Schedule, the amount of compensation is to be determined on the basis of the

loss of earning capacity suffered by the workman. The only difference is that in cases wherein the workman suffered injuries specified in the schedule, rock bottom is fixed by the Legislature by creating deeming fiction. This deeming fiction entitles the workman to claim the amount of compensation irrespective of the fact as to whether he has actually suffered any loss of earning capacity or not. In such cases, it will not be even open to the employer to lead evidence and say that the workman has not suffered any loss of earning capacity and therefore he is not entitled to any amount of compensation that what is fixed by the Legislature.

13. The Legislature intended to confer benefit on the workman with an object to see that the workman or his family members are not taken over by a sudden mishap. Therefore, the Legislature has seen to it that in such cases without there being further examination, the amount of compensation can be calculated even by the employer and be paid to the workman. By doing so, the employer may avoid the liability of payment of penalty as provided u/s 4A of the Act. In case the workman is not satisfied with the payment of amount of compensation as statutorily fixed, the workman is not precluded from claiming in excess of the loss of earning capacity fixed under the statute. This is the only interpretation which can be placed on the provisions of Section 4 of the Act. Otherwise it would lead to invidious discrimination between unfortunate employees, one of whom may receive accidental injuries specified in the Schedule and another one who may receive accidental injuries which are not specified in the schedule. One of them who receives injury specified in the schedule would be entitled to claim only the minimum amount of compensation as "deemed loss of earning capacity" while the other one who has received injury not specified in the schedule will be in a position to claim any amount of compensation commensurate with the actual loss of earning capacity by leading appropriate evidence. Such an interpretation cannot be placed on the provisions of the Act which is intended to confer benefit on the workman. The interpretation which is consistent with the object of the Act is that by creating deeming fiction, the Legislature has only provided rock bottom.

14. The amount of compensation commensurate with the loss of earning capacity as deemed loss indicated in the schedule will be liability of the employer irrespective of the fact as to whether the workman leads any evidence or not or whether there is actual loss of earning capacity or not. In such cases it will not be even open to the employer to lead evidence and establish that the workman has not suffered any loss of earning capacity. But the contrary is not true. Even in such cases it would be open to the workman by leading appropriate evidence to establish that he has suffered loss of earning capacity far in excess of what is fixed by the Legislature. On examination of the evidence if the Commissioner for Workmen's Compensation finds that the workman has suffered loss of earning capacity in excess of what is deemed loss of earning capacity under the Act there is nothing in the Act which would preclude the Commissioner for Workmen's Compensation from awarding the compensation in excess of percentage fixed by

the Legislature in the schedule.

15. In the instant case physical disability certified by the doctor is to the extent of 40%. It is certified by the doctor that the functions below the wrist are lost. Such an injury is not specified in schedule to the Act. An attempt was made to refer the injury to one or the other item of Schedule I to the Act and show that the Legislature has fixed the loss of earning capacity as prescribed in the schedule and in the instant case the injury suffered by the workman indicates only a meagre loss of earning capacity. Thereafter it was sought to be argued that the amount of compensation cannot be in excess of what is fixed by the Legislature. However, as indicated hereinabove, such an argument cannot be accepted. It is always open to the workman to show that despite the statutorily minimum percentage fixed by the Legislature, he is entitled to claim compensation in excess of what is fixed by the Act. In this case, it appears from the judgment of the Commissioner of Workmen's Compensation that the injury suffered by the workman is a non-scheduled injury and therefore compensation is required to be awarded as per the provisions of Section 4(1)(c)(ii) of the Act. We see no reason to take a different view than the one taken by the learned Commissioner for Workmen's Compensation. The Commissioner for Workmen's Compensation has estimated the loss of earning capacity of the workman on the basis of the evidence led before him. It may also be noted that at the time of accident the workman was only 34 years of age. Had he not met with the accident and had he not been injured in the right hand, he might have been able to perform his duty in a better manner. He might have been able even to opt for another job and raise his earning. It is not shown that the estimate arrived at by the learned Commissioner suffer from any infirmity. The amount of Compensation fixed by the Commissioner is eminently just and proper and there is no reason to take a different view.

16. For the aforesaid reasons the appeal is required to be dismissed. The appeal stands dismissed with no order as to costs.