

(2001) 01 KAR CK 0061

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4428 of 1997

The Assistant Executive Engineer, N.H. No. 13, Bijapur

APPELLANT

Vs

Shantavva and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2001) 2 ACC 439 : (2003) ACJ 79 : (2001) 90 FLR 584 : (2001) ILR (Kar) 3031 : (2002) 3 KarLJ 589

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Ashok Mensinkai, Additional Government Advocate, for the Appellant; D. Nagaraj, for the Respondent

Final Decision : Dismissed

Judgement

Chidananda Ullal, J.—This is an appeal filed by the Assistant Executive Engineer, Bijapur, to challenge the order dated 31-7-1996 in No. WCA:3R:81/95 passed by the Workmen's Compensation Commissioner, Bijapur. In passing the said order, the Workmen's Compensation Commissioner while allowing the claim made by the respondents had awarded a sum of Rs. 55,251.00 together with interest at 6% per annum.

2. The learned Additional Government Advocate, Sri Ashok Mensinkai, had taken me through the impugned order under challenge. He had also taken me through the facts of the case. While urging the grounds made out in the instant appeal, it was argued by him that the Workmen's Compensation Commissioner (henceforth in brief referred to for convenience as the "WCC") had totally erred in awarding the compensation without there being evidence as to at what point of time the alleged accident had taken place. According to him, the alleged accident resulting in the death of one Yellanagouda, the husband of the respondent 1 and the father of the respondents 2 and 3 had not at all taken place during the course of employment and inasmuch as admittedly, the accident

had taken place while the deceased was on his way to his residence. In support of his argument, he had also cited before me a reported decision of the Supreme Court in the case of Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, .

3. Therefore, Sri Ashok Mensinkai submitted that the impugned award passed by the WCC is liable to be set aside in allowing the instant appeal.

4. The learned Counsel appearing for the Respondents 1 and 2 (respondent 3 having been served with notice had remained absent before Court), Sri Nagaraj, argued at the outset that the appellant having filed the objection statement before the WCC did not challenge the evidence adduced by the claimants and further more he did not adduce his side of the evidence to oppose the claim, To counter the argument of the learned Additional Government Advocate that the accident that had taken place during the course of employment, Sri Nagaraj had placed reliance on the reported decision of the High Court of Judicature, Andhra Pradesh, in the case of Shree Krishna Rice and Flour Mills Vs. Challapalli Chittemma, . He had also pointed out that in the said decision, it was held that the expression "employment" as defined in Section 3 of the Workmen's Compensation Act is wider than the actual place of work or duty where the workman had to discharge. In the said decision, the High Court of Andhra Pradesh had held that even when the worker were to proceed from the place of employment to his residence and that if the accident were to take place then, the same had to be construed in law that the accident had taken place arising out of and during the course of employment.

5. Therefore, Sri Nagaraj submitted that the instant appeal does not merit any consideration. He prayed that the appeal be dismissed in confirmation of the order passed by the WCC.

6. Incidentally, Sri Nagaraj had also pointed out that the instant appeal had been filed with a long delay of 490 days.

7. Having heard both the learned Counsels for the contending parties before me, the sole point that arises for my consideration is whether the alleged accident in which Yellanagouda, the husband of the respondent 1 and the father of the respondents 2 and 3, died was during the course of employment or not.

8. My answer to the above point is in the affirmative, for, the Courts have time and again held that, even if any injury or death were to take place during the course of journey from the residence to the place of employment and so also, from the place of his employment to his place of residence, it has to be construed in law as the accident one taken place during the course of employment. That the Courts had consistently held so by applying the principle of the notional extension of time of employment. As I see, it may be by applying that theory, the Andhra Pradesh High Court in the decision one relied upon by the learned Counsel for the respondents held as follows, no matter it had not been stated so in so many words:

"... The expression "employment" in Section 3 of the Workmen's Compensation Act is wider than the actual work or duty which the workman had to do. It is enough, if at the time of the accident the workman was in actual employment although he might not be actually turning out the work which it was his duty to carry out. It is for this reason that even when a workman is resting, or having his food, or taking his tea, or coffee (in the factory premises) or proceeding from the place of employment to his residence and an accident occurs, the accident is regarded as arising out of and in the course of the employment".

9. In the instant case, as I have noticed, the appellant had only filed his objection statement before the WCC and beyond that he did not do anything inasmuch as he had not even cross-examined the respondent 1 (examined as A.W. 1) and further he had not adduced his side of the evidence. That being the case, to me it appears that the appellant could not have filed the instant appeal before this Court at all.

10. It is also added that the decision the one cited by the learned Additional Government Advocate before the Court has got no application to the instant case in hand.

11. In that view of the matter, the instant appeal has to fail and that the respondents, who were made to come before this Court for no good reason, are entitled to for compensatory cost. That compensatory cost I assess at Rs. 1,000.00. Let the State deposit sum awarded before the WCC within a period of three months from this day together with cost and interest, in which event, the WCC may as well disburse the same to the respondents herein on they being properly identified.

12. The State is also at liberty to recover the cost from the concerned officer, who was prosecuting the case before the WCC.

The appeal therefore stands dismissed with cost as above.