
(2007) 06 KAR CK 0025
In the Karnataka High Court
Case No : M.F.A. No. 1529 of 2004

The General Manager, Tungabadra Minerals Ltd.

APPELLANT

Vs

Sri G. Ameer

RESPONDENT

Date of Decision : 21-06-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 2 (g), 3 (1)

Citation : (2008) ACJ 1953 : (2007) ILR (Kar) 3482 : (2007) 6 KarLJ 233

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : K.N. Srinivasa, for the Appellant; M.C. Narasimhan for K.B. Narayanaswamy, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—This appeal is directed against the Workmen's Compensation Commissioner's order, dt. 17.01.2004 passed in W.C.No. 1140/2001. It may not be necessary to refer to the facts of the case, as it is not in dispute that the respondent-workman is an employee under the appellant and that he has sustained injury in the course of the employment.

2. Sri K.N. Srinivasa, learned Counsel for the appellant urges a solitary, but formidable, contention that the appellant has paid the salary for the laid up period, spent on the medical treatment of the respondent-workman and retained the services of the respondent-workman; therefore he has not suffered any loss of earning. Sri Srinivasa further submits that subsequent to the accident, the respondent-workman is even promoted from the cadre of Electrician to the cadre of Senior Electrician and that is placed on higher scale of pay. As there is no reduction in his earnings, the question of paying any compensation does not arise at all.

3. Sri Srinivasa brings to my notice Section 2(g) and the proviso (a) of Section 3(1) of the Workmen's Compensation Act, 1923 (hereinafter called the Act). The

same are extracted hereinbelow:

2(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

3. Employer's liability for compensation. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable.

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.

4. He has marshalled the afore-extracted statutory provisions to buttress his submission that the partial disablement has not resulted in the reduction of the earning capacity of the appellant. That is why the appellant is not liable to pay any compensation to the respondent.

5. Per contra, Sri M.C. Narasimhan, learned Senior counsel appearing for Sri Narayana Swamy for the respondent-workman submits that compensation cannot be traded off, just because the respondent-workman is continued in employment. Denying the compensation on the ground of his continuing to be in employment would only result in the negation of the beneficial provisions of the Act, which are intended to benefit the unfortunate workman like the respondent herein. In support of this submission, he has relied on a Division Bench judgment of High Court of Judicature at Madras in the case of *The Management of Sree Lalithambika Enterprises, Salem Vs. S. Kailasam*, The relevant paragraph is extracted hereinbelow:

10. Coming to the scope of Section 4(1)(c)(ii) of the Act, we are the view that the loss of earning power should not be confined only to the present capacity because it is contended by the management that at the same salary the workman is continued in employment. That will be only begging the question. If this were to be the law, the employer can easily evade the provisions of the Act by continuing the employment of the same terms as was enjoyed by the workman prior to the accident. Therefore, we are unable to agree with the view taken by the Punjab High Court in *Sewa Singh v. Indian Hume Pipe Co.*, (supra). Nor again can it be said that if in future the workman is compelled to seek employment at reduced wages he can claim compensation. That would only result in the negation of the beneficial provisions of the Act which are intended to benefit unfortunate workman like the respondent herein. Added to this, should

the management wind up its business, the workman will be in the lurch because no person with his eyes open will give employment to a person who had suffered an injury of this kind. Therefore, this is clearly a case to which Section 4(1)(c) (ii) of the Act would apply. Consequently, we agree with the judgment forming the subject-matter of the appeal.

6. Nextly, Sri Narasimhan draws support from a Division Bench judgment of Kerala High Court in the case of Mohammed Vs. Cochin Port Trust, wherein it is held that compensation for permanent disablement suffered by workman in the course of his employment, as a result of employment injury, has to be paid independent of compensation for the period during which he could not attend to his duties due to temporary disablement.

7. He has also brought to my notice a decision of the Apex Court in the case of Kunal Singh Vs. Union of India (UOI) and Another, wherein it is held that giving invalidity pension to a person is no ground to deny the protection which is mandatorily available to him under some other statute.

8. The submissions of the learned Counsel have received my anxious consideration. It may also be profitable to refer to a judgment of the Orissa High Court in the case of Executive Engineer, O.S.E.B. v. Keder Charan Lenka reported in 1997 LAB.I.C.37, Para-5 of the said judgment is extracted hereinbelow:

5...Legislative intent is to consider the loss of earning capacity in the case of permanent/partial disablement. The effect of any temporary engagement and/or temporary job may practically result in no reduction in emolument. That does not have any determinative effect. Plea of the Board and its functionaries is without any merit.

9. It is also worthwhile to refer to a Division Bench judgment of Gujarat High Court in the case of State of Gujarat Vs. Rajendra Khodabhai Deshdia and Others, , wherein it is held that the workman is entitled to secure compensation for the loss of earning capacity which is different from earning; earning capacity need not be confused with earning; earnings may increase on account of the general conditions of employment.

10. A perusal of the afore-referred reported decisions reveals that certain distinction has to be made between the loss of earning and loss of earning capacity. Entitlement to compensation is not lost merely on account of retention and even of promotion in the same establishment. The entitlement to compensation under the Act cannot be denied or postponed depending on the present or future earning. The total amount that a workman can get is fixed by the Act; the same depends upon the difference between his wage earning capacity before the accident and his wage earning capacity after the accident. The provisions of beneficent legislation are to be constructed so as to advance the beneficent purpose,

11. In view of the afore-discussed trite position in law, the formidable contention

urged on behalf of the appellant fails. This appeal is dismissed. No order as to costs.

12. The amount deposited by the appellant with this Court at the time of instituting the appeal is ordered to be transferred to the Workmen's Compensation Commissioner, Bellary.