
(2007) 05 OHC CK 0058
In the Orissa High Court

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Rabindra Mandal and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 105

Citation : (2009) ACJ 962 : (2007) 104 CLT 174 : (2007) 1 OLR 927 Supp

Hon'ble Judges : I. Mahanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I. Mahanty, J.—The Oriental Insurance Co. Ltd. (Appellant herein) has filed the present appeal challenging the Judgment dated 10.4.2002 passed by the Commissioner of Workmen's Compensation & Asst. Labour Commissioner, Balasore in W.C. Case No. 91 of 1998, whereby the Commissioner of the Workmen's Compensation has awarded a sum of Rs. 1,64,963/- in favour of the father of the deceased workman and the Appellant-Insurance Company has been directed to pay the awarded amount within thirty days, failing which 12% simple interest will be recovered from the date of filing of the claim case, i.e., 12.9.1998 till realization.

2. Learned Counsel on behalf of the Insurance Company submits that the Respondent No. 1 (claimant) filed a case for compensation on the ground that his son Late Gajendra Mandal, who died on 9.7.1998 while working as a labourer in a truck bearing registration number OR-09-A-1695 belonging to the Respondent No. 2 (owner), when he came in contact with live electric wire while loading the vehicle. Respondent No. 2 admitted the claim of Respondent No. 1 in the compensation proceedings and the present Appellant-Insurance Company raised objection on the following grounds:

i) that there was no master and servant relationship between the Respondent No. 2 and the deceased;

- ii) that the death of the deceased had not occurred in course of his employment;
- iii) that the death of the deceased occurred while he was chasing a monkey in the jute field and the deceased came in contact with live electric wire and died due to electrocution.

3. Learned Counsel for the Appellant submitted that the Appellant had engaged an independent investigator to ascertain the facts in the present case who after investigation into the case concluded that the deceased had died due to electrocution when he came in contact in live electric wire while chasing a monkey in the jute field. Relying upon such a report of the so called "independent investigating agency" the Insurance Company filed a petition on 3.4.2002 before the Workmen's Compensation Commissioner seeking permission to adduce evidence to prove the falsity of the case but the said petition was rejected by the Court below. Learned Counsel for the Appellant submitted that since the present case is a case of fraud and such fraud has been detected in course of investigation by a private agency, the award having been based on falsehood and fraud, is liable to be set aside and in this respect Learned Counsel for the Appellant placed reliance upon the Judgments in the case of S.P. Chengalvaraya Naidu v. Jagannath and Ors. 1994 (I) OLR 201 (SC) and in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, .

4. Learned Counsel for the Appellant relied upon Section 105 Cr.P.C. and advanced his argument that this Court in course of hearing of the appeal, has every power to rectify the mistake and errors of jurisdiction committed by the lower Court during trial of the case and even though no specific challenge has been made to the illegal order of rejection of the petition dated 3.4.2002 for adducing evidence, the same can be interfered with in course of the present appeal.

5. On the other hand, Learned Counsel for the Respondents (claimants) submitted that the deceased Gajendra Mandal died while working as labourer in a truck bearing registration number OR-09A-1695 belonging to Respondent No. 2 while loading straw. While doing so, a monkey jumped on the deceased, for which he lost his balance and fell down and came in, contact with a live electric wire, which resulted in the deceased becoming senseless and then after treatment in the Head Quarter Hospital, Bhadrak, the deceased succumbed to injury caused by electrocution. He further submitted that in support of his case, the claimant examined himself as P.W.1 and one eye witness as P.W.2 and certified copies of G.R. Case records were also marked as Exhibits in the claim proceedings. Learned Counsel submitted that the Workmen's Compensation Commissioner assessed the evidence of eye-witness and the documentary evidence on record and thereafter, awarded the compensation in favour of the Respondent No. 1 (the father of the deceased). Learned Counsel further submitted that the Respondent No. 2, the owner of the vehicle filed his written statement and adduced evidence as O.P.W.1 admitting the employment and the accidental death of the deceased in course of his employment. He further

submitted that the Appellant-Insurance Company ought not to be permitted to raise contentions beyond those stated in the written statement filed before the Workmen's Compensation Commissioner and in the said written statement the Appellant-Insurance Company had only taken general denials and nothing specific, as is being raised in the appeal, finds any mention. Learned Counsel further submitted that the evidence said to have been collected by the Appellant through the "independent investigating agency" cannot be considered by the Appellate Court, since it does not form part of the records of the original proceedings as well as in view of the fact that the Commissioner has rejected the petition of the Insurance Company to adduce evidence on 3.4.2002 and further, since the Insurance Company has not challenged the order in any form whatsoever and the order of rejection of the petition for adducing evidence has become final and no challenge thereto has been made by the Insurance Company, this Court in its Appellate jurisdiction, ought not to consider such averment being advanced by the Insurance Company.

6. On a consideration of the contentions advanced by the Learned Counsels for the rival parties, the first point that needs to be considered is whether the alleged fraud vitiates all proceedings. Reliance was placed on Judgments of the Apex Court in the case of S.P. Chehgalvaraya Naidu v. Jagannath and Ors. 1994 (1) OLR (SC) 201 and in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, . While respectfully agreeing with the proposition of law as enunciated in the aforesaid Judgments and it is well settled that "no Judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" as laid down in (Lazarus Estate Ltd. v. Beasley 1956 (I) QB 702), yet in my view and in the circumstances of the present case, I do not see how the aforesaid Judgments would have any application to the facts of the present case.

7. The first and foremost fact is that no plea of fraud has been raised by the Appellant in their written statement filed before the Workmen's Compensation Commissioner. It is a very well settled principle of law that the party pleading fraud, has to first assert "fraud" in its written statement and such assertion must be "specific" and thereafter onus lies on such a party to lead evidence in respect of its stand of fraud. In the present case, there is no assertion of fraud in the written statement filed by the Appellant-company. Further, the result of the so called private investigation said to have been carried out by the Appellant company does not form part of the Court records. Although the Appellant-company had moved the Commissioner of Workmen's Compensation for adducing evidence, the same was rejected by Order dated 3.4,2002 and the Insurance Company has not sought to challenge the said order in any form whatsoever and has instead allowed the same to become final. It is further well settled that this Court while acting as an Appellate Court has to base its findings only on the materials on record before the Workmen's Compensation Commissioner and no other.

8. Order 6, Rule-4 and Order 18, Rule-2 of the CPC requires that fraud must necessarily be pleaded and proved. In the case of Gayatri Devi and Others Vs. Shashi Pal Singh, ; the Supreme Court while dealing with an appeal arising out of the Rent Control and Eviction Act, came to hold that the appeal demonstrates how a determined and dishonest litigant can interminably drag on litigation to frustrate the results of a judicial determination in favour of the other side. The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the Respondent. Apart from his tenacity and determination to prevent the Appellants from enjoying the fruits of the decree, their appears to be nothing commendable in the case. Even before the Supreme Court the self same arguments of "fraud", that the Appellants were not legally owners of the suit property, were pleaded. In Paras-14 and 16 of the aforesaid Judgment, the Supreme Court held that the High Court had grossly erred in entertaining the revision petition and granting relief was unjustified both on facts as well as on law.

In the aforesaid Judgment, the Apex Court relied upon its earlier Judgment in the case of Ravinder Kaur Vs. Ashok Kumar and Another, , in which the Apex Court held as follows:

Courts of law should be careful enough to see through such diabolical plans of the Judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.

Their Lordships further held that the Judgments relied upon by the Respondents on the Judgments in the case of S.R. Chengalvaraya Naidu v. Jagannath and Ors. 1994 (I) OLR (SC) 201 and in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, and came to hold that the though fraud unravels everything, yet, "fraud must necessarily be pleaded and proved". In the entire history of the present litigation, nothing has been pleaded, much less has been proved as fraud. We cannot consider the plea of fraud without any basis.

9. The finding, as to whether the deceased was an employee or not and as to whether the deceased died in course of his employment or not are matters of fact and such findings of fact arrived by the Workmen's Compensation Commissioner, being based on documentary and oral evidence, brought before it are unimpeachable, unless errors of record can be pointed out in course of the appeal. In the present case, no such error of record is pleaded nor pointed out. On the other hand, the Learned Counsel for the Appellant seeks to rely upon the result of the "private investigation" carried out on its behalf, to try and create a cloud over the impugned award. It is well settled that once "fraud" is pleaded, law casts an onus on such party not only to plead the act of fraud specifically, but also to lead evidence in/support of its plea. The Appellant having failed to plead "fraud" and/or lead evidence of fraud ought not to be permitted to deny the claims of the Claimants merely by trying to create a cloud or doubt over the

award. In this respect, I am of the view that, this Court in exercise of its Appellate jurisdiction is bound by the documentary as well as Oral evidence which form part of the case record and the Appellant having chosen not to challenge the order passed by the Commissioner dated 3.4.2002 rejecting the Appellant's petition to adduce evidence, can no longer be permitted to raise the self same contention in the present appeal.

This Court in the case of Steel Authority of India Ltd. v. Kautara Parida 1998 ACJ 15 came to hold that whether a workman is on duty at the time of the accident is a question of fact. On the facts proved in this case, the Commissioner having come to a conclusion that the deceased was on duty on the date of the accident, such fact cannot be interfered with in this appeal. In Divisional Mechanical Engineer S.E. Railways Khurda Road and Anr. v. P. Adinarayana 2003 (3) TAC 98 Orissa, wherein this Court came to the conclusion that the finding arrived at by the Commissioner on the cause of the accident being a finding of fact is unassailable and cannot be interfered with in appeal by the High Court.

10. Relying upon the observations of the Apex Court as noted hereinabove, I am of the view that in the case at hand, fraud was not pleaded by the Appellants in the written statement nor was any evidence in support of such plea brought on record and, therefore, in the present appeal I am not inclined to enter into the plea of fraud as raised by the Appellant since I am of the view that in course of exercise of the Appellate jurisdiction of this Court, accepting such plea would tantamount to permitting a party to raise an objection which is otherwise not entertainable in law.

11. In view of the findings arrived hereinabove, I am of the considered view that no substantial question of law has arisen in the present case and the order of Workmen's Compensation Commissioner being based on evidence on record both the documentary and oral is unassailable. Accordingly, the appeal is dismissed and since the Appellant has already deposited the compensation amount before the Registry of this Court pursuant to the Order dated 5.12.2002, the Registry is directed to release the amount in favour of the Respondent No. 1 along with the accrued interest on proper identification.