

(1998) 01 KAR CK 0063
In the Karnataka High Court
Case No : MFA No. 248 of 1994

The Traffic Manager, New Mangalore Port
Vs
Mrs. B. Radha and Others

APPELLANT
RESPONDENT

Date of Decision : 06-01-1998

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4 A (3)

Citation : (1998) 79 FLR 796 : (1998) ILR (Kar) 1964

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : B.L. Acharya, for the Appellant; V.S. Naik, for the Respondent

Final Decision : Dismissed

Judgement

P. Vishwanatha Shetty, J.—This appeal is filed challenging the correctness of the order dated 30th of May 1995 made in Case No. W.C.A.CR.6/FC.87-88 by the Commissioner for Workmen's Compensation and Labour Officer, Dakshina Kannada Sub-Division-II, Mangalore (hereinafter referred to as "the Commissioner"), by the Traffic Manager, New Mangalore Port Trust Registered Cargo Handling Workers" Administration Wing, Mangalore (hereinafter referred to as "the port Trust").

2. The brief facts of the case, which are relevant for the disposal of this appeal, may be set out as hereunder:

(a) One Thangappan, who was working as a Shore Worker in the employment of the New Mangalore Port, Mangalore, drowned to death at 21.30 hours within the New Mangalore Port, while he was engaged in unloading timber from one of the ships berthed at the said New Mangalore Port. The first respondent, who is the widow, and respondents 2 to 4, who are the children, of the said Thangappan, filed an application before the Commissioner claiming compensation on the ground that the said Thangappan had died in the course of the employment of the Port Trust. On the date of the claim petition, respondents 2 to 4 were minors.

It is stated in the claim petition that the said Thangappan was getting a monthly wage of more than Rs. 1,000/-. The appellant, while admitting that the said Thangappan was a workman of the appellant, resisted the claim of the respondents on the ground that the said Thangappan did not die in the course of the employment and, therefore, the appellant is not liable to pay the compensation for the death of the said Thangappan. According to the appellant, though he said Thangappan was a workman employed by the appellant, he was not given any duty on 20th of September 1986 in the second shift commencing from 18-00 hours to 3-00 hours, inside the Port area either for unloading timber or any other material from any ship berthed at the Port area; and he was engaged for duty only in the first shift on 20th of September 1986; and he was required to carry out his duties only during the first shift and he was not supposed to continue his work during the second shift commencing at 18-00 hours and ending at 03-00 hours, the next day; and during the second shift, the actual worker drafted was one Sri Challappan having Token No. 197; and, therefore, the said workmen did not die due to any accident occurred while on duty in the course of employment. It is the further case of the appellant that on account of certain clandestine understanding between the said Challappan and the said Thangappan contrary to the instructions of the appellant, the said Thangappan stepped in place of the said Chaliappan without the consent, permission and knowledge of the appellant, thereby committing acts of grave and serious misconduct with a view to make double earning immediately after the strenuous 08-00 hours shift of work and presumably since the said Thangappan was exhausted, he must have died on account of the accident in question and the said accident has happened on account of the misconduct committed by the said Thangappan.

(b) On the said of the appellant, one Sri Krishna Rai, Labour Welfare Officer of the appellant, one Sri T.N. Almeida, Manager of the appellant, one Sri Moosa, Foreman of Evergreen Suppliers, and one Sri M.P. Bhandray, the Captain of the appellant, were examined as O.P.Ws.1, 2, 3 and 4 respectively. Shift Wage Statement for Shore Workers of the first shift of 20th of September 1986 employed for Evergreen Suppliers, Pooling Statement of the appellant for the first shift on 20th of September 1986 to M/s Evergreen Suppliers, Shift Wage Statement for Shore Workers of the second shift on 20th of September 1986 employed for Evergreen Suppliers, and Pooling Statement of the appellant for the second shift on 20th of September 1986 were marked as Exhibits OP-1, OP-2, OP-3(a), OP-3(b), OP-3(c) and OP-4 respectively. On the side of the respondents, one Sri Krishnan Kutty, the first respondent and one Sri Thomas, Shore Leader, were examined as A.Ws.1, 2 and 3 respectively. Certificate No. K.Dis.12761/88/87 dated 28th of July 1988 issued by the Tahsildar, Quilon, was marked as Exhibit A-1 on behalf of the respondents.

(c) The Commissioner, after appreciating the evidence on record, has found that deceased Thangappan died in the course of the employment of the appellant and awarded a sum of Rs. 78,824/- as compensation with simple interest at the rate

of 6% per annum on the said amount from 20th of September 1986 till the date of payment of compensation; and directed the appellant to deposit the amount of compensation awarded within 15 days from the date of the receipt of the communication of the operative portion of the order. As stated earlier, aggrieved by the said order, this appeal has been filed.

3. The learned Counsel for the appellant strenuously contended that the finding recorded by the Commissioner that Thangappan died in the course of the employment of the appellant, is totally erroneous in law and the said finding has been recorded in disregard of the evidence on record. Elaborating the said contention, the Learned Counsel pointed out that the said Thangappan was not allotted any work during the second shift when the., accident in question had occurred, and if the said Thangappan had worked without the permission and contrary to the instructions of the appellant, on account of some clandestine understanding between him and one Challappan, who was required to work during the second shift, it cannot be said that the said Thangappan died in the course of the employment of the appellant.

4. Sri V.S. Naik, Learned Counsel appearing for the respondents, while seriously refuting the contentions advanced by the Learned Counsel for the appellant, strongly supported the finding recorded by the Commissioner that the said Thangappan died in the course of employment of the appellant. He further submitted that the finding recorded by the Commissioner being purely a question of fact, the said finding does not call for interference by this Court in exercise of its appellate jurisdiction u/s 30 of the Workmen's Compensation Act (hereinafter referred to as "the Act"). He submitted that it is only in cases where there is substantial error of law, this Court can interfere with the finding recorded by the Commissioner. He further submitted that it is a case of death where it is not in dispute that the deceased was a workman in the employment of the appellant and in this situation, the area of controversy raised by the appellant that the deceased was not entitled to work during the second shift should not be taken into account to defeat the just claim of the widow and the three children of the deceased, who were minors at the time of the accident. He also pointed out that the compensation awarded is not much and an Institution, like the appellant, which is an instrumentality of the State, should not be permitted to defeat the just claim of the respondents.

5. In the light of the contentions urged by Learned Counsel appearing for the parties, the only question that would arise for consideration in this appeal, is as to whether Thangappan died in the course of the employment of the appellant.

6. Having carefully considered the submissions made by Learned Counsel appearing for the parties and the finding recorded by the Commissioner, I am of the view that there is absolutely no justification for me to interfere with the finding recorded by the Commissioner that the said Thangappan died in the course of employment. It is not in dispute that deceased Thangappan was in the employment of the appellant. The only area of controversy was whether the

deceased had unauthorisedly and contrary to the instructions, worked during the second shift commencing from 6-00 p.m., to 3-00 a.m., i.e., between 18-00 hours and 03-00 hours. The Commissioner, after considering the evidence of A.Ws. 1,2 and 3, at Paragraph-32 of the order under appeal, has categorically found that deceased Thangappan was the Shore Worker of the appellant and on 20th of September 1986, he was assigned to work in the first shift from 8-00 a.m. to 5-00 p.m. He has further found that deceased Thangappan died at 9.30 p.m. during the second shift on 20th of September 1986 on account of drowning. At Paragraph-33 of the order, the Commissioner has further found that the death of Thangappan has taken place by way of accident. A.W.1, who is the shore Worker, has stated in his deposition that deceased Thangappan while he was unloading logs from the ship to the lorry through crane, in order to avoid the impact of the wooden logs on him, stepped back and fell into the sea water and died in the accident. He has further deposed that deceased Thangappan, on that day at 7.45 p.m., had brought food to him from his house and at the time of the accident, the workman was doing work in the place of another Shore Worker one Sri Challappan by way of badli arrangement, which was the practice prevailing and well known to the appellant as well as Shore Workers' Leader. It is in his evidence that it is a well accepted practice prevailing in the appellant-Port Trust that in the event of any worker in the gang is unable to attend to the work, the badli work is being entrusted as otherwise the gang work will come to a standstill. He has also stated that the badli work is a internal arrangement of the workers, which is being done in the shift or in the middle of the shift, for which no permission was required from the appellant. He has denied in the cross-examination that it was not permissible for the workers to make badli arrangement in the middle of the shift without the permission of the superiors, A.W.2 has fully corroborated the evidence of A.W.1. The evidence on record, more particularly the evidence of A.W.1 and A.W.3., Shore Leader, also shows that the said Thangappan was working as a substitute in the place of another Shore Worker-Challappan, as the said Challappan complained of stomach upset and went to answer the call of nature; and the said Thangappan was taken as a substitute in place of the said Chaliappan with express permission of the Shore Leader A.W.3, so that the work that was going on, may not come to a stand-still during the absence of the said Challappan. The stand taken by the appellant in the Written Statement that there was some clandestine understanding between deceased Thangappan and the aforesaid Challappan shows that at the time of the accident in question, the deceased was working as a Shore Worker. The Commissioner, on consideration of the evidence on record and the stand taken by the appellant in the Written Statement, has categorically found that the evidence on record clearly establishes that the said Thangappan died in the course of the employment of the appellant. I do not find any error in the said finding recorded by the Commissioner, much less an error of serious nature, which calls for my interference in exercise of my appellate jurisdiction u/s 30 of the Act. Section 30 of the Act empowers this Court to interfere with the finding recorded by the Commissioner only in case of substantial error of law. The evidence on record,

referred to above, shows that the said Thangappan, with the permission of the Shore Leader, as per the prevailing practice of the work carried out in the Port Trust, worked as a substitute in the place of Chaliappan, who had to leave the work spot on account of some stomach problem, with a view to avoid stoppage of the work. Undisputedly, deceased Thangappan was in the employment of the appellant. There is also no serious dispute that he met with an accident and died within the New Mangalore Port while unloading timber from one of the ships berthed at the said New Mangalore Port, which is undisputedly the work of the appellant. The only serious objection raised by the appellant was that deceased Thangappan was assigned work in the first shift and not in the second shift. Under these circumstances, merely on the objection taken by the appellant that the said Thangappan was not authorised by the appellant to work during the second shift to carry out the work of the appellant, it is not possible to take the view that Thangappan did not die on account of the accident in the course of the employment of the appellant, especially in the back group of the evidence on record that the prevailing practice in the appellant-Port Trust was that one worker would work as a Badli substitute for another in the event of the other worker not being able to attend to the work assigned to him. It is not the case where a stranger, who had nothing to do with the appellant-Port Trust or who was not an employee of the appellant-Port Trust, unauthorisedly and on his own volition did the work of the appellant at the instance of another employee of the appellant and met with an accident. On the basis of the evidence on record, I have no hesitation to accept the case of the contesting respondents that the prevailing practice in the appellant Port Trust was to permit an employee of the appellant-Port trust in the absence of another employee of the Port Trust to work as the badli employee or a substitute with a view to avoid dislocation of the work of the appellant-Port Trust. In a matter like this, while understanding the meaning that is required to be given to the expression "in the course of employment", the same has to be understood in the background of the object of the Act. The object of the Act is to compensate the legal heirs of the victim of an accident, who dies in the accident. Therefore, the Court, while considering whether a victim of an accident was in the course of the employment of an employer or not, has to take broad probabilities of the facts and circumstances of the case and should not look at it from a very narrow and pedantic manner. As stated earlier, if the commissioner, in the facts and circumstances of the case, has taken the view that a victim of the accident had died or met with an accident in the course of the employment, the appellant Court, in exercise of appellate power conferred on it u/s 30 of the Act, should not lightly interfere with the said finding unless the decision of the Commissioner has resulted in substantial error of law, which has resulted in serious miscarriage of justice. In the instant case, as noticed by me earlier, there is no such error committed by the Commissioner, in the order under appeal. On the other hand, I am inclined to take the view that the order under appeal is one of the few orders which I have come across where the Commissioner has considered various aspects of the matter in a greater detail and based his conclusion on the evidence on record. In view of my above

conclusion, this appeal is liable to be rejected.

7. One another aspect of the matter which I am required to consider before dismissing the appeal, is with regard to the claim made on behalf of the respondents for award of higher rate of interest than the one awarded in the order under appeal, on the ground that the appellant has unjustifiably obtained an interim order of stay of the judgment and order under appeal. Undisputedly, the order under appeal was passed on 13th of May 1995. The said Thangappan had died on 20th of September 1986 leaving behind him his young widow and three minor children, who are all daughters. The amount of compensation awarded in a sum of Rs. 78,824/- along with interest at 6% per annum from the date of the death till the date of payment, if it is compared to the loss caused to the family of the victim, is not substantial and it cannot be considered as payment of just compensation in terms of money for the loss of the only bread earner of the family. Sub-section (3) of Section 4(A) of the Act provides that where any employer is in default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner may direct that in addition to the amount of arrears, simple interest at the rate of 6% per annum on the amount due together with, if in the opinion of the Commissioner, there is no justification for delay, a further sum not exceeding 50% of the amount awarded by way of penalty. The power conferred on the Commissioner to award 50% of the amount of compensation by way of penalty for the unjustified delay in payment of the compensation by the employer to the victim or his legal heirs, should be treated only as a compensation. Therefore, it is clear that Sub-section (3) of Section 4A of the Act mandates the employer to pay the compensation amount as soon as it falls due to the victim of the accident or his/her legal heirs, and if it is not paid, power is conferred on the Commissioner to award additional amount by way of penalty or compensation. The appellant has obtained an interim order of stay of the judgment and order dated 13th of May 1995 before this Court on 28th of September 1995. The status of deceased Thangappan and the respondents would clearly show that they belong to a very lower rung of the society. As noticed by me earlier, the said Thangappan, at the time of his death, left behind him his young widow and three minor children. Under these circumstances, I am of the view that the respondents will have to be compensated suitably since they are deprived of the benefit of the judgment and order passed by the Commissioner from 13th of May 1995 and that can be done by awarding interest at 12% on the compensation awarded by the Commissioner after the expiry of one month from the date of the order passed by the Commissioner i.e., one month after 13th of May 1995, till the date of payment. It is also necessary to point out that the appellant-Port Trust is an instrumentality of the State. It cannot, in the very nature of its functioning and constitution, equate itself with any other private employer, whose sole object is to make profit. The appellant-Port Trust, in all its decision and more particularly when it concerns payment of compensation to legal heirs of the victim of an accident that takes place in the course of the employment of the victim, is expected to take a

very fair and reasonable stand keeping in mind the object and the purpose behind the legislation. However, in this case, I find that is wanting.

8. The respondents are also entitled for the costs of this appeal fixed at Rs. 3,000/-.