
(1994) 03 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 16 of 1993

Tripura Jute Mill Ltd.

APPELLANT

Vs

Kuhinoor Begam

RESPONDENT

Date of Decision : 23-03-1994

Acts Referred:

Constitution of India, 1950 — Article 227, 227

Citation : (1995) 2 GLJ 310

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : P.K.Paul, H.Deb Nath, B.Das, A.Chakraborty, Advocates appearing for Parties

Judgement

1. This application under Article 227 of the Constitution of India has been filed on the allegation that the award of learned Commissioner of Workmen's Compensation Act, 1923 (hereinafter referred to as the Act), West Tripura dated 19.8.1992 in TS (WC) No. 10 of 1991 was without jurisdiction.

2. The facts leading to this petition are as follows : On 24.7.91 the respondents herein, namely, Smti Kuhinoor Begam and her minor son Ashish Mia presented a petition before the learned Commissioner stating that Abdul Khaleque Mia who was the husband of respondent No. 1 was a Loom Operator under the present petitioner, namely, the Tripura Jute Mill Ltd and in course of his employment Abdul Khaleque Mia died on 11.12.89 on account of some occupational disease viz Cancer.

3. The petitioner herein resisted this claim petition by filing a written objection before the learned Commissioner and denied all the material averments. It was however, admitted that the petitioner was appointed as a workmen on 1.12.80 under the petitioner. But it was specifically denied that the petitioner contacted occupational disease, namely, Cancer in course of his employment under the petitioner. The further contention was that when the deceased approached, the petitioner by filing a letter dated 26.11.88 for change of duty the petitioner

agreed and on humanitarian ground transferred him from weaving department to SOC department where he was provided very light duty in the morning shift from 6 AM to 2 PM. It was, therefore, stated that the respondents were not entitled to get any compensation as the deceased died not on account of any occupational disease. For determination of the case learned Commissioner framed 5 issues including an issue, namely, "Whether the death of the said deceased workmen was due to occupational disease within the meaning of the Act, 1923.?"

4. On the basis of the documentary evidence adduced by the parties learned Commissioner arrived at the conclusion that the deceased Khaleque Mia died on account of the occupational disease and awarded a sum of Rs.81,5407 together with interest at the rate of 12% per annum to the respondents. Aggrieved by this award the petitioner has come up before this Court under Article 227 of the Constitution of India.

5. The award of the Commissioner has been challenged mainly on the ground that the compensation was determined in a manner not warranted by law.

6. Mr.B.Das, the learned counsel appearing on behalf of the respondents has however, raised a preliminary objection as to the maintainability of this petition under Article 227 of the Constitution of India. The main contention of Mr.Das is that the Act provides for preferring appeal under section 30 of the Act against determination of the claim and accordingly such an application under Article 227 of the Constitution is not maintainable. But Mr. A. Chakraborty, the learned Advocate General appearing on behalf of the petitioner has submitted that a bare perusal of the award will make it abundantly clear that learned Commissioner arrived at the conclusion without deciding the vital issue in the case and as such according to him the error committed by the learned Commissioner was very much apparent calling for the interference by this Court.

7. In support of his contention Mr.Das, has referred to the decision rendered in the case of Union of India vs. Adhoc Claims Commissioner & others reported in AIR 1977 Calcutta 393. It is true that in this case such a preliminary objection was raised as to the maintainability of the application under Article 227 of the Constitution of India. But on perusal of the judgment I find that under para 19 of the judgment their Lordships held :

"Without entering into the controversy that the right of appeal conferred on a person is available to the Union of India, the orders of the Claims Commissioner were impugned on the ground that the compensation was determined in manner not authorised or warranted by the relevant law and accordingly such determination was without jurisdiction. In view of the challenge to determination of compensation as being without jurisdiction we think that the application under Article 227 are maintainable in law.?"

8. It would, therefore, be quite apparent from the above observation that where an order of the Claims Commissioner was impugned on the ground that the compensation was determined in a manner not authorised or warranted by the

relevant law such an order can be challenged under Article 227 of the Constitution of India.

9. The next decision referred to by Mr. Das is a decision rendered in the case of the Regional Manager & another vs. Pawan Kumar Dubey reported in AIR 1976 SC 1766. Mr. Das drew my attention to paragraph 7 of the judgment and submitted that since the petitioner preferred an appeal against the same award and that appeal is still pending such an application under Article 227 is not maintainable. It is true that the petitioner herein preferred an appeal against the same award. But Mr. Chakraborty at the very outset submitted that he would not press the appeal which can be dismissed. Under para 7 of the aforesaid judgment their Lordships observed:

“Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusion in two cases even when the same principles are applied in each case to similar facts.”

10. The appeal being withdrawn it has to be examined whether under the facts and circumstances of the case this petition can be entertained.

11. Mr. Chakraborty's contention is that this Court has the power to interfere under Article 227 where there is error apparent or illegal exercise of jurisdiction by any Court or any Tribunal within the jurisdiction of this Court. In support of this contention Mr. Chakraborty has referred to a decision rendered in the case of Suresh Chandra Dutta & others vs. Mohan Bashi Dutta & another reported in AIR 1970 Tripura 51. In that decision learned Judicial Commissioner under para 12 of his judgment observed :

“The power of superintendence conferred on the High Court by Article 227 involves a duty to keep all Courts and Tribunals within the bounds of their authority and to see that they do what the duty requires, and further that they do it in a legal manner. The power can be exercised suo motu in proper cases. Therefore, the High Court can interfere if there is an error apparent on the face of the record. (AIR 1962 Punjab 117 and AIR 1958 Allahabad 154 relied on).”

12. In the instant case, Mr. Chakraborty has quite fervently argued that a bare perusal of the award and judgment of the learned Commissioner will make it abundantly clear that learned Commissioner without deciding the issue as to whether the deceased died on account of any occupational disease jumped to the conclusion of making the award requiring the petitioner to pay a sum of Rs.81,540/-. It has already been stated above that one of the issues which learned Commissioner framed was the issue “Whether the death of the said deceased workman was out of an occupational disease within the meaning of the Act.” But on perusal of the judgment of the learned Commissioner I find that he

actually did not decide this issue. The finding which learned Commissioner made in the case may be extracted as follows :

?In evidence of PW 1, I find that fact of death on 11.12.89 at GB Hospital, Agartala, employment under opposite party as Loom Operator on a wage of Rs. 1,2007 per month since 1980. He was then aged 31 years and he died out of Cancer. Treatment at GB Hospital and Thakurpukur could not save him. The death certificate and the treatment papers are on record as Ext A series.

In cross it is admitted that in the year 1988 the deceased was shifted from heavy duty to light duty under OP.

It all contained the admissible evidence to answer the Issue Nos. 1,2,3 and 4 in favour of the claimant.?

13. It will appear from the above passage that learned Tribunal did not virtually write a sentence even as to whether the deceased died on account of occupational diseases or that during his employment as workman he contracted the diseases. Section 23 of the Act invest the Commissioner with all the powers of civil Court under the Code of Civil Procedure. The whole object of framing issue is to keep the various points arisen for decision separate and distinct and it is also incumbent upon the Court to decide all issues of fact and record offending on all the issues, though according to it findings of other issues might not be necessary for disposal of the case.

14. In the present case it will appear from the written objection that was filed on behalf of the petitioner that the petitioner quite categorically denied that the deceased died on account of any occupational disease. Learned Commissioner also framed an issue as to whether the deceased died on account of occupational disease. But as abstracted above relevant portion of the judgment will show that learned Commissioner without discussing the evidence on record decided the issue. Such a finding without deciding the issue is certainly an error apparent. It is quite clear from the discussion I have made above that the trial Court acted unreasonably and has ignored the relevant facts before making the finding.

15. So, in view of the above facts and circumstances, I am of the considered opinion that where learned Commissioner exercises his jurisdiction in a manner which is quite unreasonable and capricious this Court can certainly exercise its power under Article 227 of the Constitution.

16. I, therefore set aside the determination made by the learned Commissioner i.e impugned award and judgment and remand the case to that Court with a direction to determine the issue, namely, issue No.2 ?Whether the death of the said deceased workman was out of occupational disease within the meaning of the Act, 1923 ?? within a period of two months from the date of receipt of the case and the evidence recorded during the original trial shall, subject to all just exception be evidenced during the trial after remand. Both the parties are entitled to adduce further evidence.

17. The revision petition is disposed of with the above order and directions. Send down the records immediately.