

(2002) 09 KAR CK 0050

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5038 of 2002

T.S. Prabhu and Others

APPELLANT

Vs

Smt. Bhavani Poojary and Another

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Citation : (2003) 1 ACC 87 : (2003) ACJ 698 : (2003) 96 FLR 307 : (2002) ILR (Kar) 5382 : (2003) 1 KarLJ 469 : (2002) 4 KCCR 396 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M. Sudhakar Pai, for the Appellant; A. Keshava Bhat and Krishna for Caveator-Respondent-1 and A. Keshav Bhat, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—The appellants are challenging the judgment and order dated 31-5-2002 passed by the Commissioner for Workmen's Compensation, Mangalore.

2. The facts in brief are as under:

Parties are referred as per their ranking before the Trial Court. The appellant is the alleged employer. The respondent is the claimant.

3. The claimant filed an application seeking for a compensation of Rs. 99,370/-. Her case was that her husband was working with the respondent (appellants). He was regularly doing firewood cutting work. He had gone for work to the depot on 31-5-1999 at about 7.30 or 8.00 a.m. He started cutting of firewood. During the course of employment, the axe hit his right leg and due to excess bleeding of blood, he was laid down on the floor. He was taken to Government Wenlock Hospital, Mangalore and he died thereafter.

4. This application was opposed by the appellant-respondents. They deny their relationship in para 9. They say that Sri T.S. Prabhu is the owner of the firewood

depot. He is aged 74 years. He is not maintaining normal health. Due to back pain and joints pain his mobility is restricted. He was not in the depot regularly. Respondent 2 is not in his service. Respondent 3 is the son of respondent 2. He is employed in a local private firm in M/s. J.B. Enterprises, Mangalore. The deceased Poovappa Poojary was a "Nati Vaidya" and was selling medicines (Herbal) and "Kashayas" for Herpes and Jaundice. During his service with M/s. Sovereign Tiles, he was residing near the depot. He was known to the respondent. The first respondent's firewood depot has medicine trees like "Sappanga", "Goli", "Coconut" and "Herbs". Since Poojary was well-known to respondent 1, he was allowed to take these Herbs and also the barks of the trees for preparing "Kashayas". On 31-5-1989, a message was received that Poojary was sitting in a slanting position on the ground and he was taken to the hospital and thereafter, he died. Evidence was recorded. The Commissioner in the impugned order has framed six issues. Thereafter, he has chosen to grant a compensation of Rs. 83,237/-.

5. Learned Counsel for the appellants contend that the impugned award requires my interference. He states that there is no relationship of employer and employee. He states that the respondent-deceased was 75 years old and he used to go only for the purpose of herbs collection. The Commissioner, according to him has passed a perverse order.

6. Per contra, Sri A. Keshava Bhat, learned Counsel took me through the pleadings to contend that the respondent took the deceased to the hospital and he died during the course of the employment.

7. After hearing the Counsel, I have carefully perused the material on record. It is seen from the material on record that the deceased was aged more than 70 years. Ex. P. 1 is FIR complaint and a reference is made with regard to the age. Ex. P. 2 also evidences the age of the deceased as 75 years. It is also seen from the material on record that he is alleged to have suffered an accident and there was a lot of blood loss to the deceased. In the post-mortem report, it is seen that he died due to myocardial infarction. Therefore, from the pleadings and the evidence on record, it cannot be said that a man of 75 years would be working as a firewood cutter and he died due to an accident. Evidence also supports the contention. Unfortunately, the Commissioner without proper appreciation of the material has given a finding by way of conjectures and surmises.

8. It is also seen from the material on record that the respondent is fairly aged. He has filed the registration certificate and the registration certificate indicates no employment in industry. He has also led evidence in this regard. Taking into consideration the pleadings and the evidence, it can be definitely said that there was no employment potential available to the firewood. Therefore, the theory of the claimant having worked as an employee in the given set of facts is difficult to digest. Here again the Commissioner has failed in not appreciating the material on record in giving an adverse finding against the appellant. In fact, the Commissioner notices in the order of no employment and having come to this

conclusion he still holds that there is an employment. At this stage, it is required to be noticed the contention of the learned Counsel for the respondents with regard to the death in the premises and subsequently taking him to the hospital. The appellant from the beginning has stated that he has some herbal plants in his land and the deceased was a "Nati Vaidya" who used to come for collection of herbs. Plants are to be removed and for the said purpose, he might have used the axe to cut the wood and in the said process, he might have suffered an injury and therefore, the explanation of the employer in the given set of facts requires consideration. On this ground also, the Commissioner has given a perverse finding. In fact, it is also seen that the second respondent is his nephew and the third respondent is his son. They are not his employees. Even in the examination, the claimant has not given any acceptable evidence for a claim u/s 3 of the Act.

9. Learned Counsel for the respondents however invites my attention to say that on the material facts, the findings cannot be disturbed. In the normal circumstances, I would not have interfered with the fact-finding order in an appeal u/s 30 of the Act. In the case on hand, the age of the deceased, the objections, the post-mortem report, the collection of herbal materials, all would go against the claimant. In an appeal u/s 30, this Court can interfere, if a party is able to prove that the findings are perverse in the sense that either of the findings are without any material on record or it is totally opposed to the material on record. I am fully satisfied that the impugned order is nothing but a perverse finding and hence, I am compelled to interfere in the case on hand.

10. In these circumstances, this appeal is allowed. The judgment and award is set aside. The appellant is entitled for refund of the amount deposited in the Court in the given set of facts.