

(1987) 05 GAU CK 0010
In the Gauhati High Court
Case No : M.A. (F) No. 17 of 1985

Union of India (UOI)

APPELLANT

Vs

Santi Bala Dey and Others

RESPONDENT

Date of Decision : 22-05-1987

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 2(1), 30

Citation : (1988) ACJ 274

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, for the Appellant; S. Deb and D.K. Biswas, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923, for short "the Act", filed by the Union of India, represented by the Director, Telecommunication, Tripura area, Agartala, against the judgment and award dated 28.2.1985 and 22.3.1985 respectively passed by the learned Commissioner, Workmen's Compensation at Udaipur, South Tripura, in Case No. T.S. (Workmen's Compensation) 7 of 1979 and T.S. (Workmen's Compensation) 6 of 1981. By the aforesaid order the learned Commissioner directed the Appellant to pay a sum of Rs. 13,500/- for the death of the workman, which resulted due to an accident.

2. Deceased Surajit Dey while working as a lineman under Telegraph Department as a Daily Rated Master Roll Worker slipped from the telegraph post and fell down on the ground. As a result of the said accident, he suffered fracture of vertebrae and he was hospitalised in G.B. Hospital. The accident took place on 19.6.1976 and the workman died on 27.7.1979. I find from the judgment of the learned trial court that as a result of the accident the workman suffered from paralysis of the lower limbs for the injury of his spine. Though the Medical Officer was of the opinion that he was likely to recover fully but he died.

3. Though the accident took place on 19.6.1976, the Appellant informed the Commissioner for Workmen's Compensation only on 24.1.1979. Thereafter notices were issued by the learned Commissioner on the parties but notice on the Workman could not be served due to his death. However, the father of the deceased workman filed a claim petition before the learned Commissioner on 5.4.1983, which was allowed.

4. The first contention of Mr. K.N. Bhattacharjee, learned Counsel for the Appellant, is that as the claim was not preferred within two years as required u/s 10 of the Act, it is barred by limitation.

5. Section 10 of the Act, inter alia, provides that no claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner provided as soon as practicable and unless claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. The third proviso to the said section empowers the Commissioner to decide any claim to compensation notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided, if he is satisfied that there was sufficient cause.

6. Admittedly, Section 10 imposes an obligation on the Appellant to inform the learned Commissioner about the accident as soon as practicable. But in the instant proceedings, the Appellant miserably failed to discharge his duty in time as he informed the learned Commissioner after about 26 years of the occurrence. The third proviso to the said Section 10, as stated earlier, empowers the Commissioner to entertain such claim for compensation even after the expiry of the said-period. According to Mr. Bhattacharjee, learned Counsel, from the impugned judgment it does not appear that there was sufficient cause to entertain the petition. I am constrained to hold that the contention of Mr. Bhattacharjee has no force, as the learned Commissioner has given sufficient reason for entertaining the claim after the above period. According to the learned Commissioner, the present petition is maintainable to safeguard the interest of the workman, who died as a result of the accident in course of his employment. The learned Commissioner has also rightly taken note of the fact that the present legislation is a measure for giving socioeconomic justice. I, therefore, reject the contention of Mr. Bhattacharjee.

7. The second contention of Mr. K.N. Bhattacharjee is that the workman was a Master Roll Mazdoor and as such, he is not an employee as defined in Section 2(1)(n). The said clause defines "workman" as follows:

(n). "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i) xxx xxx xxx

(ii) employed on monthly wages not exceeding five hundred rupees, in any such capacity as is specified in Schedule II....

8. Mr. Bhattacharjee has stressed on the words within the brackets, namely, "other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business". To get benefit of the said expression, the employer must prove two conditions, namely, employment of the workman is of a casual nature and he is so employed otherwise than for the purposes of the employer's trade or business.

9. Admittedly, the deceased workman fell down from the post after erecting telecommunication line. It is also admitted that he was a Master Roll employee. So, the second contention that the deceased workman was employed otherwise than for the purposes of the employer's trade or business has not been fulfilled. Regarding the first contention that the employment of the deceased was of a casual nature, I am of the opinion that it has no force. Merely because the deceased was employed as a Master Roll worker, it cannot be held that his work was of a casual nature. The Appellant has not produced any document to prove this point. Considering the above fact, I hold that in the instant proceedings the Appellant has miserably failed to prove that the deceased workman was a casual worker.

10. The third contention of Mr. K.N. Bhattacharjee is that since the father of the deceased workman was a Grade IV employee working in the Office of the Sub-Divisional Officer, he cannot be treated as a dependent of the deceased workman. Clause (d) of Sub-section (1) of Section 2 of the Act defines the word "dependent". Sub-clause (iii) of the said Clause (d) runs as follows:

(iii) If wholly or in part dependent on the earnings of the workman at the time of his death,

(a) xxx xxx xxx

(b) a parent other than a widowed mother,

(c) xxx xxx xxx

Reading the said Clause (d), it appears that a parent, if partly dependent on the earnings of a workman at the time of his death, shall be treated as a dependent for the purposes of the Act. In the Indian society joint family system is prevalent and normally a parent also shares the earnings of his sons though he may have some income and this is true, more particularly in case of persons having low income. The father of the deceased workman was only a Grade IV employee. I can take judicial notice of the fact that Grade IV employees are not paid to have a decent living. So, I can safely come to the finding that the father of the deceased workman was partly dependent on the income of his son. I, therefore, hold that the present petition by the father of the deceased workman is maintainable.

11. The last contention of Mr. K.N. Bhattacharjee is that it has not been proved that the death of the deceased workman was due to the result of the accident. In support of his contention, he has drawn my attention to the observation of the learned Commissioner that according to the opinion of the Medical Officer, the deceased was likely to recover fully. There is no dispute that as a result of the accident the deceased workman suffered from complete paralysis of the lower limbs of his body and he was hospitalised where ultimately he died. The burden was on the Appellant to show that the death was not due to the result of the accident. At any rate, Mr. S. Deb, learned Counsel for the Respondents, pointed out that had the deceased workman survived he would have got more compensation, that is, Rs. 18,900/- as per Schedule IV to the Act, as amended by the Amending Act of 1976. As there is no evidence to show to the contrary, I hold that the deceased workman died as a result of the accident, which occurred in course of his employment.

12. From what has been stated above, I find no merits in the present appeal and it is liable to be dismissed, which I hereby do. As this is a litigation between the State and its workman, I deem it fit and proper that costs should be awarded.

13. In the result, the appeal is dismissed with costs.