
(1975) 10 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.A.O. No. 76 of 1974

Variganji VenkateswarIn Bhusban Galla	APPELLANT
Vs	
Sri Vijaya Engineering Works	RESPONDENT

Date of Decision : 01-10-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, Order 13 Rule 3, Order 13 Rule 4, Order 13 Rule 5, Order 13 Rule 6
Workmens Compensation Act, 1923 — Section 23, 25, 30
Workmens Compensation Rules, 1924 — Rule 28, 30, 31, 41

Citation : (1976) ACJ 43

Hon'ble Judges : Venkatrama Sastry, J

Bench : Single Bench

Advocate : V. Parabrahma Sastry, for the Appellant; G.V.R. Mohana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Venkatrama Sastry, J.—This appeal is preferred u/s 30 of the Workmen's Compensation Act.

2. The Appellant was the Petitioner in Case No. 295 of 1969. His son Koteswara Rao, was injured in an accident arising out of and in the course of his employment under the Respondent herein on 29th March, 1969 resulting in his death on 30th March, 1969. The Appellant herein claimed compensation of Rs. 7,000 which was contested by the Respondent.

3. It appears that the Petitioner was examined on 6th December, 1972. On 20th December, 1972 to which date the case was posted for hearing, the applicant was present in person and the opposite party also was present. The applicant requested the officer, i.e., Commissioner for adjournment on the ground that his Advocate could not be present in Court on that day. The Commissioner rejected that request and directed the opposite party to lead their evidence. It appears two witnesses were examined by the Respondent on 20th December, 1972, who

were not subjected to cross examination either by the applicant or by his Advocate. On the basis of the evidence of P. W. 1. and the Respondents witnesses, the Commissioner decided the case holding that the applicant is not a dependent of the deceased and that the accident did not occur out of the employment of the deceased. In that view the application was dismissed without costs.

4. In this appeal it is submitted by Mr. Parabrahma Sastry, learned Counsel for the Appellant that no sufficient opportunity was given to the applicant by the Commissioner to establish his case and also to cross-examine the witnesses examined by the Respondent. His mere presence on 20th December, 1972 in the Court was not sufficient to proceed with the hearing of the petition, because he being an illiterate person could not cross-examine the witnesses examined by the Respondent. The adjournment request made by him should have been granted because his lawyer was prevented by sufficient cause from attending the Court. The disposal of this petition on the chief examination of the Respondents' witnesses and without giving further opportunity to the Petitioner to let in all his evidence has therefore resulted in great prejudice. He therefore wants that an opportunity may be given to him to adduce his evidence and to cross examine the Respondent's witnesses. He further submits that under the provisions of Workmen's Compensation Act the Commissioner should have followed the provisions of CPC as far as possible. But such a procedure has not been followed. Hence the case may be remanded to the lower Court for a fresh disposal.

5. Mr. G.V.R. Mohana Rao, learned Counsel for the Respondent opposed this request on the ground that no application for adjournment was made by the applicant, on that date.

6. u/s 23 of the Workmen's Compensation Act the Commissioner is deemed to be a civil Court and he would have all the powers of a civil Court under the CPC for the purpose of taking evidence on oath and for enforcing attendance of witnesses and compelling production of documents and material objects. Section 25 prescribes the method of recording the evidence. Rules 28, 30 and 41 also deal with the procedure to be adopted in such trials before the Commissioner. Rule 28 speaks of framing issues. Rule 31 provides that the Commissioner should maintain under his hand and date all the proceedings on an application. It is stated by both the learned Counsel that no such proceeding seems to have been maintained, because it is not to be found in the records. Under Rule 41 it is provided that the provisions of first schedule to the CPC viz., those contained in Order 5, Rules 9 to 13, 15 to 30; Order 9; Order 13, Rules 3 to 10; Order 16, Rules 2 to 21 and Order 17 and 18 (Rules 1 and 2) should also apply to the proceedings before the Commissioner. The Commissioner can proceed otherwise than in accordance with the said provisions under the proviso to that Rule, only if he is satisfied that the interests of the parties will not thereby be prejudiced. The provisions of this Rule that some of the Rules under Order 9 and Order 17 also apply to the trial of the applications before the Commissioner also show that it is

open to the Commissioner to grant adjournment on sufficient grounds. He can refuse an adjournment under the proviso only if refusal of such an adjournment is not thereby going to cause any prejudice to the party, who asks for such an adjournment.

7. Now in this case the refusal of the adjournment has certainly caused prejudice to the Appellant herein because the Respondent's evidence was recorded without any opportunity given to the applicant's advocate to cross-examine them, and the chief examination is therefore going unchallenged. It therefore caused a serious prejudice to the applicant. In this case it would have been proper for the Commissioner to grant the request for adjournment by adjourning the case say by two or three days to enable the applicant to bring his advocate or to engage another advocate to conduct his case. On account of the rejection of the request for an adjournment made by the Appellant, a great prejudice in not only further opportunity to adduce evidence on his own behalf has been denied, but also he has been deprived of the benefit of cross-examining the witnesses examined on behalf of the Respondent.

8. The contention of Mr. G.V.R. Mohana Rao is, because Order 9 is also made applicable the remedy of the Appellant should have been only to file an application before the lower Court to re-open the matter under Order 9 and not to file an appeal. But he is overlooking the fact that the Commissioner decided the matter finally on merits on 21st December, 1971, i.e., the next day after refusing the adjournment. The Appellant could not have therefore invoked any of the provisions under Order 9 to get any relief from the lower Tribunal.

9. In these circumstances I am satisfied that there was no proper disposal of the case and proper procedure has not been followed. The Appellant therefore deserves a fresh opportunity not only to let in further evidence on his behalf but also to cross-examine the witness already examined by the Respondent or yet to be produced hereafter.

10. The order of the lower Court is set aside and the case is remanded to the Commissioner for Workmen's Compensation, Guntur Region, Guntur for fresh disposal on merits, after giving an opportunity to both the parties to let in their evidence. There will be no order as to costs.

11. As the accident occurred in the year 1969, this is a matter in which the Commissioner should dispose of the application as early as possible and at any rate within a period of two months from the date of receipt of the records by him.

Case Remanded.