
(2000) 02 BOM CK 0062
In the Bombay High Court
Case No : A.S.F.A. No. 11 of 1984

Wali Mohamad Ashrafi Amjad Mukadam	APPELLANT
Vs	
Abdul Latif Haji and Others	RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 30

Citation : (2000) 85 FLR 182 : (2000) 1 LLJ 1251

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Heleker instructed by S.M. Dharap, for the Appellant;

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The appellant the original applicant in W.C. (Non-Fatal) No. 5 of 1980 before the Commissioner for Workmen's Compensation, Nasik, being aggrieved by its order dated September 16, 1982, has filed the present first appeal. The applicant had filed the aforesaid application before "the Commissioner u/s 22 of the Workmen's Compensation Act, 1923 read with other provisions of the Act and Rules framed therein for the injury caused to him during the course of his employment on March 1, 1980. He has claimed an amount of Rs. 5,040/- towards the compensation with penalty and interest. In the application he has claimed that he was drawing Rs. 280/- per month as monthly wages. He has further averred in the application that on March 1, 1980 when he was on duty he met with an accident during the course of his employment and his ring finger and little finger of his left hand were injured. He has also stated that as a result of the said accident he was rushed to the Wadia Hospital and thereafter his a fore said two fingers were amputated. He was treated by Dr. Sayyed. Though the Opponents No. 1 to 3 were served with the notice none appeared before the Commissioner. In the absence of the Opponents the learned Commissioner proceeded ex parte in the matter. There was no written statement or reply filed by the Opponents to deny the averments made

by the Applicant in the Application. The applicant's evidence was recorded and there was no cross-examination of the Applicant and, therefore, his evidence remained unchallenged. The learned Commissioner however, by his impugned order dismissed the application.

2. Being aggrieved by the said order the Applicant has filed the present First Appeal u/s 30 of the Act. In his oral evidence the applicant has sworn on oath that he was in the employment of the Opponent No. 1 for about 15 years before the accident took place. On March 17, 1980 he was working on the powerloom and the accident took place, as a result of which his two fingers were injured and were finally required to be amputated in the hospital. From this evidence which is unchallenged all the ingredients, of the partial and permanent disability are proved. The applicant has in no uncertain terms stated on oath that he was in the employment of the Opponent No. 1 for a period of 15 years before the date of the accident which took place on March 17, 1980 while he was working on the powerloom and he lost his two fingers which were finally required to be amputated by surgery in the Wadia Hospital. This evidence of the applicant is more than enough to establish the fact that the applicant was injured on account of an accident during the course of and arising out of his employment with the Opponent No. 1. I fail to understand why the learned Commissioner has answered in negative the point No. 1 and point No. 2. From the aforesaid uncontroverted evidence of the Applicant he has proved that an accident had taken place on March 17, 1980 during the course and arising out of his employment. According to me, therefore, the learned Commissioner's finding that the applicant has not proved that he met with an accident on March 13, 1980 (March 17, 1980) which arose out of and during the course of his employment. All the ingredients which are necessary as a foundation for the workmen's compensation claim were very well present before the Commissioner and, therefore, his negative findings on the same point are totally perverse and baseless. Similarly his negative finding on the Point No. 2 in respect of injuries sustained by the applicant resulting in permanent partial disablement are also equally baseless and perverse. I have already recorded hereinabove the evidence given by the Applicant which is more than clear that he had sustained permanent partial disablement that is to say as a Weaver he lost his two fingers of his left hand. The medical certificate of Wadia Hospital is on record, which I have seen and read myself. I reproduce the said Medical Certificate as under:

"Saiyad Hospital, Camp Road, Malegaon (Nasik)

This is to certify that Wali Mohd. Ashrafi Amjad Mukadam had accidental injury to his left hand ring and little fingers. Both these fingers were to be amputated from the base. The accident occurred on March 17, 1980.

Date: 7.4.1980 Sd/-

Dr. Y.A. Saiyad, MS",

M.M.S. CL. II, Medical Officer

From this certificate it is clear that the left hand ring finger and little finger were amputated from the base and that the accident had occurred on March 17, 1980. There is no challenge to the said certificate. The second Medical Certificate i.e. Injury Certificate dated April 8, 1980 specifies the disability as 14%. Both these medical certificates are on the record of the Commissioner. It is nobody's case that the accident had not taken place or that the applicant was not required to be moved to the Hospital or that his two fingers were not required to be amputated. The Opponents have not cared to file their written statement or reply before the Commissioner. They did not even care to send a reply to the notice sent by the Applicant. They did not appear before the Government Labour Officer where the applicant had lodged a complaint regarding the accident and his wages. The Opponents have been totally callous throughout and their attitude appears to be that of a person, who behaved in the most negligent manner. There was absolutely nothing on record to suggest that the case made out by the applicant was totally false or bogus and that the medical certificates were also bogus and unreliable or unbelievable. There was absolutely no whisper anywhere to say that the Applicant's case was totally false or bogus or baseless. In the aforesaid facts when the oral evidence adduced by the Applicant himself speaks for the accident and permanent partial disability, the findings recorded by the learned Commissioner cannot be sustained and the same are required to be quashed and set aside and perverse. The learned Commissioner appears to have taken a very pedantic approach and insisted that the Doctor should have been examined to prove the medical certificate. Even assuming that the medical officer was not examined, the fact remains that the Applicant had stated on oath the date, time and place of the accident and the nature of the injuries which he sustained and that he lost his two fingers of left hand. It is, therefore, clear that he sustained permanent partial disablement which under Schedule I, Part II, Item 9, is regarded as 25% partial disability. This could have been done by the Commissioner even in the absence of a medical certificate as the applicant has in clear terms on oath stated that he met with an accident during the course of his employment while working and his two fingers of left hand were required to be amputated. This evidence according to me was enough to prove his case within the Item 9 of Schedule I, Part II of the Act. It would of course have been better for the Applicant himself to have examined the Doctor but even in the absence of such evidence by the medical officer the applicant should have succeeded, as he had established all the ingredients of permanent partial disablement caused to him on account of the accident which arose during the course of and arising out of his employment.

3. I, therefore, hold that the applicant had sufficiently proved his case to get compensation on account of the permanent partial disablement caused to him by the accident. The applicant is, therefore, entitled to get a sum of Rs. 5,040/- towards the compensation and Rs. 2,520/- as penalty to be paid by the Opponents jointly and severally. The Opponents are also liable to pay interest on

the aforesaid total amount at the rate of 6% from the date of the accident. The Opponent shall pay the aforesaid amount within four weeks from today.

4. The appeal is allowed, with costs which is quantified at Rs. 1,500/- to be paid by the Opponent No. 1 to the Applicant.

5. Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

6. Certified copy of this order is expedited.