

Neeru Devi and Others Vs Ram Nath and Others

Court: RAJASTHAN HIGH COURT (JAIPUR BENCH)

Date of Decision: Sept. 17, 2014

Acts Referred: Employees Compensation Act, 1923 - Section 21, 30

Hon'ble Judges: Alok Sharma, J.

Bench: Single Bench

Advocate: Ram Singh Rathore, for the Appellant; Rishipal Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Alok Sharma, J. These misc. appeals arise out of the order dated 2.4.2013 passed by the Employees Compensation Commissioner, Jaipur

City, Jaipur (hereinafter "the Commissioner") rejecting the appellants' claimants" (hereinafter "the claimants") applications for compensation under

the Employees Compensation Act, 1923 (hereinafter "the Act of 1923") on the ground that he had no territorial jurisdiction to entertain the

applications. The Commissioner noted the fact that a perusal of the First information Report (hereinafter "the FIR") and the Post Mortem Report

(hereinafter "the PMR") filed with the claim application indicated that the accident in respect of which compensation was claimed occurred in

Rohtak in the State of Haryana and the employer of the deceased workman was a resident of Sangoor in the State of Punjab. And from the claim

petition and the documents in support thereof it was not prima facie made out that the claimants were "ordinarily residing" at Jaipur. In this view of

the matter the claim petition was dismissed on the ground of lack of territorial jurisdiction.

2. Mr. Ram Singh Rathore, counsel appearing for the claimants submits that the issue as to whether the claimants were "ordinarily resident" of

Jaipur was an issue which was amenable to leading of evidence and the Commissioner could not have perfunctorily returned the claim applications

in the first instance as has been done. He has drawn the attention of of this Court to the Judgment of the Hon'ble Apex Court in the case of

Morgina Begum Vs. Managing Director, Hanuman Plantation Ltd., in support of his contentions.

3. Mr. Rishipal Agarwal, counsel appearing for the National Insurance Company Limited (hereinafter "the Insurance Company") submits that the

order dated 2.4.2013 passed by the Commissioner is a well considered and reasoned order and brooks no interference. He submits that

admittedly the accident in respect of which compensation was claimed took place in Rohtak (Haryana) as evident from the FIR and PMR. It was

also an admitted fact that the Employer of the deceased resided at Sangoor (Punjab). Counsel submits that it was/is extremely unlikely that one

ordinarily residing at Jaipur would be engaged by a truck owner residing in Sangoor (Punjab) as if there were no drivers and Khalasies available

there. He submits that in any event it was for the claimants to file other documents- as they filed the FIR and PMR- in support of the their claim

that they were ""ordinarily residing"" in Jaipur. This not having been done, the claim petitions could not be maintainable at Jaipur only on the mere

bald assertion of the claimants that they were ""ordinarily residents"" of Jaipur.

4. Heard. Considered.

5. The Hon"ble Apex Court in the case of Morgina Begum v. Managing Director, Hanuma Plantation Ltd. (supra) referred to Section 21 of the

Act of 1923 and construed it in the context of intention of the Parliament to facilitate migrant workers laying claim petitions under the Act of 1923

at the place where they had taken residence subsequent to their migration. Further in the said case, the claimants were living with their son-in-law

at Tezpur, Assam after the death of their son in an accident while in employment in Nagaon also in Assam. The case before the Hon"ble Supreme

Court turned on its own facts. It was s nobody"s case in the claim petition that the claimants had migrated to Jaipur after the accident in issue and

were residing with a relative there. For one to be ""Ordinarily resident"" of a place, a casual stay or flying visit does not suffice. An intention to make

a place one"s ordinary abode has to be established. And such intention being a question of fact has to be averred in the pleadings.

6. The jurisdiction for laying of claim petitions has per force to be within the scope of section 21 of the Act of 1923 and when objection in thereof

is taken in the first instance as in the present case the Commissioner has to address the objection at the threshold lest the very purpose of the

jurisdiction clause under section 21 of the Act of 1923 is completely lost and the claimants facilitated in rank forum hunting. It is no doubt true that

the Act of 1923 is a welfare legislation for socio economic benefit for the workman and then dependent. However this salutary object of the Act of

1923 cannot dislocate the mandate of the very Act evident in section 21 of the Act of 1923 conferring jurisdiction on the Employee"s

Compensation Commissioner on satisfaction of any of the preconditions delineated in clauses (a)(b) or (c) of section 21 of the Act of 1923. It

cannot be the claimants' case that in spite of lack of prima facie proof as to their ordinary place of residence, the claim petition should have in any

event be put to trial and an opportunity of leading evidence with regard to the place of residence of the claimants allowed by the Commissioner.

This would tantamount to putting the cart before the horse. It is well known that the provisions of the Act of 1923 are not uncommonly misused by

choosing Forums within the jurisdiction of the Commissioners perceived to be liberal in the grant of compensation.

7. In my considered opinion in the facts obtaining in the case, there is no occasion to interfere with the order dated 2.4.2013 passed by the

Commissioner. No question of law requisite for entertaining of an appeal, as mandated under section 30 of the Act of 1923 is made out in the

present claim petition. The order dated 2.4.2013 passed by the Commissioner is based on a pure finding of fact. No perversity and error of law is

apparent in the impugned order.

8. There is no force in the appeal. Dismissed.