(2005) 11 GAU CK 0005

Gauhati High Court (Agartala Bench)

Case No: MFA (WC) No. 8 of 2004

Anukul Chandra Dey		APPELLANT
	Vs	
Bhanu Kanta Debnath and Another		RESPONDENT

Date of Decision: Nov. 18, 2005

Acts Referred:

- Workmens Compensation Act, 1923 - Section 10, 2(1), 23, 4, 4(4)
- Workmens Compensation Rules, 1924 - Rule 35, 41

Citation: (2006) 108 FLR 684 : (2006) 2 GLR 125 : (2006) 1 GLT 94

Hon'ble Judges: T. Vaiphei, J; B.P. Katakey, J

Bench: Division Bench

Advocate: T.D. Majumder, for the Appellant; G.S. Das and P. Chakraborty, for the Respondent

Final Decision: Allowed

Judgement

B.P. Katakey, J.

This appeal by the claimant is directed against the judgment dated 22.5.2004 passed by the learned Commissioner, Workmen''s Compensation, West Tripura, Agartala in Case No. Title suit (WC) 43 of 2001 praying for enhancement of the compensation awarded by the learned Commissioner.

2. The facts leading to the filing of the present appeal is that the claimant/appellant filed a claim petition before the learned Commissioner, Workmen''s Compensation, under the provisions of the Workmen''s Compensation Act, 1923 (for short ''the Act'') for awarding compensation for the death of his son Amar Chandra Dey who was a Driver-cum-Mechanic of the vehicle bearing registration No. TR-01-2112 (Commander Jeep) owned by Bhanu Kanta Debnath, the respondent No. 1 herein alleging that his son died in an accident occurred on 6.10.2001 arising out of and in course of his employment and was paid a monthly wages of Rs. 4000. The owner of

the vehicle (respondent No. 1 herein) on receipt of the notice from the learned Commissioner entered appearance and filed objection, admitting employment of the deceased as driver of the vehicle, the factum of the accident and also his death involving the vehicle arising out of and in course of his employment but has pleaded that the accident was due to negligent driving and the monthly salary/wages was Rs. 2000. The Insurance Company, the respondent No. 2 herein who was also impleaded as opposite party in the said proceeding being the insurer in respect of the vehicle in question also contested the claim of the petitioner by filing written statement denying all the statements made in the claim petition. The claimant in support of his claim has examined himself as witness. The opposite parties (respondents herein) though filed their written statements did not examine any witnesses in support of their pleadings in their written statements. The learned Commissioner, thereafter, vide judgment dated 22.5.2004 awarded a sum of Rs. 1,35,560 as compensation under the provisions of the Act for the death of the claimant''s son and directed the Insurance Company, respondent No. 2 herein to pay the said compensation as the vehicle was duly insured with the Insurance Company. It was also ordered that the amount of compensation shall carry an interest @ 12% per annum from the date of accident, i.e., 6.10.2001 till the payment is made. Hence the present appeal by the claimant, claiming enhancement of the amount of compensation.

3. The appeal was admitted vide order dated 10.9.2004 on the following substantial questions of law:

(I) Having regard to the provisions of the Workmen''s Compensation Act, 1953, whether the learned Commissioner could ignore the age of the deceased while computing the factors under Schedule 4 of the Act for determination of compensation?

(II) Whether the finding of the learned Commissioner determining the monthly income of the deceased at Rs. 2000 per month is based on evidence?

4. We have heard Mr. T.D. Majumder, learned Counsel for the appellant, Mr. G.S. Das and Mr. P. Chakraborty, learned Counsel appearing on behalf of the respondents 1 and 2 respectively.

5. Mr. Majumder, learned Counsel for the appellant arguing on the first substantial question of law framed by this Court while admitting the appeal has submitted that the learned Commissioner has assessed the amount of compensation under the provisions of the Act by taking the age of the claimant, though the age of the deceased is required to be taken into account for the purpose of ascertaining the relevant factor as stipulated in Schedule IV of the Act. According to the learned Counsel, the age of the deceased having been found to be 22 years, the relevant factor as per Schedule IV would be 221.37 but the learned Commissioner has taken the relevant factor as 135.56 by taking into account the age of the claimant who was

55 years of age. Therefore, according to the learned Counsel, the learned Commissioner has not correctly ascertained the amount of compensation under Schedule IV of the Act. Regarding the second substantial question of law formulated by this Court, the learned Counsel for the appellant has submitted that the claimant in the claim petition as well as in his deposition before the learned Commissioner has made a categorical statement about the monthly wages of the deceased being Rs. 4,000 and there being no evidence on record contrary to the said positive statement and the opposite parties having failed to examine any witnesses in support of their claim that the deceased''s wages was not Rs. 4,000 per month, the learned Commissioner ought to have accepted the monthly wages of the deceased as Rs. 4,000. But the learned Commissioner on the basis of the pleading of the owner of the vehicle in his written statement, which has not been supported by any evidence, has taken the monthly wages of the deceased as Rs. 2,000. Therefore, according to the learned Counsel for the appellant, the compensation has to be enhanced by taking the monthly wages of the deceased as Rs. 4,000. The learned Counsel in support of his contention has placed reliance on the decision of the Apex Court in I (2006) ACC 123 (SC) .

6. Mr. P. Chakraborty, learned Counsel for the respondent No. 2, Insurance Company countering the arguments put forward by the learned Counsel for the appellant has Submitted that the learned Commissioner has rightly taken the monthly wages of the deceased as Rs. 2,000 as the employer, who is the person to say about the monthly wages of the Workmen, has specifically pleaded in the writ statement that the monthly wages of the deceased was Rs. 2,000. Regarding the fixation of the appropriate relevant factor, the learned Counsel has fairly submitted that the relevant factor is to be ascertained on the basis of the age of the workman and therefore, the compensation is to be awarded by ascertaining the relevant factor on the basis of the age of the claimant''s son, i.e., 22 years.

7. Mr. Das, learned Counsel for the respondent No. 1, owner of the vehicle, has also argued that as the owner has specifically pleaded in the written statement about the monthly wages of the workmen, the said statement has to be accepted even though in support of the same, no witness was examined. Regarding the relevant factor, the learned Counsel has also fairly submitted that the learned Commissioner ought to have fixed the relevant factor taking the age of the deceased, which is 22 years and not the age of the claimant.

8. We have considered the submissions of the learned Counsel for the parties and also perused the records of Title Suit (WC) 43 of 2001.

9. The learned Commissioner on the basis of the materials available on record has recorded the finding that the claimant''s son Amar Chandra Dey was engaged as driver of the vehicle in question by the present respondent No. 1, who died in an accident occurred on 6.10.2001 arising out of and in course of his employment. The learned Commissioner has also found that the deceased was a bachelor and his age

was 22 years. No appeal has been preferred either by the owner of the vehicle nor by the Insurance Company, who are the respondents in the present appeal, against the said finding recorded by the learned Commissioner. As mentioned above, the appeal has been preferred by the claimant seeking the enhancement of the amount of compensation awarded by the learned Commissioner.

10. Section 4 of the Act provides that where death results from the injury sustained by a workmen in an accident arising out of and in course of his employment, an amount of compensation equal to 50% of the monthly wages of the deceased workmen multiplied by relevant factor is awardable. Explanation I of Section 4 of the Act provides that the ''relevant factor'' in relation to workmen means the factor specified in the 2nd column of Schedule IV against the entry in the 1st columns of that Schedule specifying the number of years which are the same as the completed years of the age of the workmen on his last birth day immediately preceding the date on which the compensation felt due. It is, therefore, evident that the ''relevant factor'' is to be ascertained in terms of Schedule IV of the Act and on the basis of the age of the workmen. The said Act nowhere provides that the relevant factor is to be ascertained on the basis of the age of the claimant in case of death of the workmen. But in case of the injury sustained by the workmen and if he is the claimant, his age is to be taken into account for ascertaining the relevant factor as per Schedule IV of the Act.

11. In the instant case, the learned Commissioner has taken the relevant factor as per Schedule IV as 135.56 by taking the age of the claimant who is the father of the deceased and not by taking into account the age of the deceased which was found to be 22 years. Therefore, the learned Commissioner has erred in law in ascertaining the relevant factor which ought to be, as per Schedule IV, 221.37 as the deceased was found to be 22 years old.

12. Coming to the 2nd substantial question of law formulated in the instant appeal, now, let us see whether the learned Commissioner was right in taking the monthly wages of the deceased as Rs. 2,000 though the claimant in the claim petition as well as in his deposition before the learned Commissioner has stated that the monthly wage was Rs. 4,000.

13. The claimant in the claim petition has stated that the deceased used to get Rs. 4,000 per month as wages from the owner of the vehivie, respondent No. 1 herein. The claimant who examined himself as witness in support, of his claim petition also deposed before the learned Commissioner that the monthly salary/wages of his son was Rs. 4,000. The respondents herein during cross examination of the claimant has only put a suggestion to the said witness that the monthly salary was not Rs. 4,000 which was denied by the claimant. The respondents did not adduce any evidence in support of their case that the monthly salary/wages of the deceased son of the claimant was not Rs. 4,000 but Rs. 2,000 as pleaded by the respondent No. 1 in his written statement before the learned Commissioner.

14. The object of the Act is to compensate the workmen who sustained personal injury or the dependants of such workmen where death results from such injuries in an accident arising out of and in course of their employment and to achieve that object, provisions in the Act have been made for special Tribunal to deal cheaply and expeditiously with any dispute that may arise and generally to assist the parties in a manner which is not possible for ordinary Civil Court. The Act being a social security legislation, its provisions should be construed in a more liberal sense in favour of the workmen so that the deserving workmen get full and speedy benefit and advantage of such beneficial legislation. Such liberal interpretation would accomplish the humane and beneficial purposes for which it has been legislated and to achieve its object of legislation. Therefore, the authorities under the Act should not read the matter of procedure so rigidly so as to deprive the workmen of the advantage and benefits under the Act.

15. In a proceeding under the provisions of the Act, the -Strict provision of the Evidence Act are not to be insisted by the Commissioner, as the inquiry required to be made by the commissioner appointed under the provisions of the said Act are summary in nature. The provision of the Evidence Act do not apply with all their complexities to the inquiry made by the Commissioner under the Act. But the general principle of the Evidence Act is to be followed by the Commissioner while deciding a proceeding under the provisions of the Act. It is no doubt correct to say that the initial burden is on the claimant to prove the factum of accident, employment and also that the accident occurred arising out of and in course of employment and the injury has been sustained in the said accident as well as the age and monthly wages. But it does not mean that the claimant must prove it by direct evidence, which may be inferred when facts proved justify such inference.

16. The Apex Court in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmed Issak, has held as under:

6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L.C. in Lancaster v. Blackwell Colliery Co. Ltd. 1918 WCIR 345 observed:

If the facts which are proved give rise to conflicting inferences of equal degrees or probability so that the choice between them is a mere matter of conjecture, then, of

course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.

17. In Parameswaran Vs. M.K. Parameswaran Nair, , a Division Bench of the Kerela High Court has observed as follows:

10. We have to bear in mind that the Workmen''s Compensation Act is a beneficial social legislation which was enacted to supply the need to provide compensation to workman sustaining employment injuries. A strict and ritualistic adherences to the procedural formalities of a trial is neither necessary nor desirable in deciding the question of entitlement of the injured employees for compensation. Nor are the Commissioners who administer that legislation qualified or competent to conduct a formal trial. A more realistic and less formal approach is called for from authorities functioning under this beneficial enactment. They shall not pretend themselves to be courts and try to discover ways to defeat the very purpose of the enactment by adopting a totally negative approach to the claims, which the disabled workman advances before them. Many of the provisions of the statute point out to this need for absence of rigidity on the part of the Commissioner in dealing with claims for compensation. The need for such relaxation was emphasized in various decisions of this Court. We need cite only two of the decisions. In Mohammed Koya v. Balan 1987 ACJ 534, a Division Bench of this Court held that the requirement of a notice u/s 10 of the Act to the employer shall not be a reason for a rigid interpretation and that want of notice or any defect or irregularity in notice shall not bar entertainment of a claim if the employer had knowledge of the accident. In Pushpan v. Manager, Bouanu Estate 1988 ACJ 912, it was held that:
It is true that Section 23 if the Workmen''s Compensation Act confers all the powers of the civil court under the Code of Civil Procedure, for purposes of taking evidence on oath and of enforcing attendance of witnesses and compelling production of documents and material objects. That provision, however, does not constitute the Workmen''s Compensation Commissioner as a ''court'' for all purposes. Nor does that provision have the effect of disabling the Commissioner from exercising such powers as to further the beneficial objects of that enactment. No provision in the Workmen''s Compensation Act disabled an authority like the Commissioner from rectifying an apparent error in the application submitted by an illiterate applicant, whose claim for compensation was denied by the employer.

11. We hold that the Commissioner who was administering a beneficial legislation meant to advance the case of employees for compensation in respect of employment injuries was obliged to act in furtherance of the intention of the statute and not to stultify the same by rigid and mechanical approaches. If the claimant

before him was a workman as defined in Section 2(1)(n) of the Act, he should have seen to it that the workman receives the compensation. It is unfortunate that he embroiled himself in a highly technical debate which would enable him to exclude the applicant from the purview of the definition by adopting an artificiality which was contrary to the terms of the statute as understood by this Court in Kochu Velu''s case 1982 ACJ 486. The inconsistencies in the plea and the evidence of the employer, his refusal to produce relevant evidence and the total unreliable nature of the evidence consisting of Exhs. M-1 and M-2 which he produced should have alerted the Commissioner to be wary in accepting the defence of the employer. In the light of the decided cases, which we have referred to, we have no hesitation in holding that the claimant was a workman since he was employed in connection with the trade or business of the employers, though such employment, was casual in nature. We hold further that the material evidence relating to his employment was deliberately kept back by the employer. We hold that the Commissioner should have drawn inference adverse to the employer from the above conduct.

18. From the reading of the various provisions of the Act, it is evident that the learned Commissioner is not to adopt a rigid procedure while dealing with the workmen''s compensation. The Commissioner is required to decide the dispute on the basis of the evidence on record and has to accept the evidence put forward by the claimant in absence of any evidence contrary thereto. In the event the claim of the claimant about the monthly wages is disputed by the employer or by Insurance Company, the burden lies on them to prove that the monthly wages of the claimant or the deceased was not as claimed by him. The employer being a person in custody of all the relevant documents relating to the monthly wages of the workman has to produce such documents to substantiate the claim that the monthly wages of the deceased or the claimant was not the amount as claimed by the claimant. The Insurance Company also, in the event of failure of the employer to produce such document can call the employer as witness and also to cause production of such documents from the custody of the employer as the Commissioner is invested with the power of a Civil Court under the CPC for the purpose of taking evidence on oath, enforcing attendance of witness and compelling production of documents by virtue of Section 23 of the Act read with Rule 41 of the Workmen''s Compensation Rules, 1924. There is no doubt that the initial burden lies on the claimant to prove about the monthly wages of the workman and once such initial burden is discharged by the claimant by adducing the evidence, which may be oral, but is reliable, the burden shift on the opposite party who dispute such claim. The learned Commissioner has to accept the version of the claimant about the wages of the workman in absence of any evidence to the contrary, if such claim is reasonable and does not appear to be exaggerated. In a given case, the Commissioner under Rule 35 of the Workmen''s Compensation Rules 1924 can make a local inspection and examine any person likely to be able to give information relating to the proceeding pending before him to illicit information to arrive at a just decision and to award the

compensation payable under the provisions of the Act. The Commissioner has also the power to cause production of any document from any of the parties, if such document is necessary for the purpose of recording his finding on the issues framed.

19. The Apex Court in Dr. KG. Poovaiah (supra) while dealing with the claim for compensation under the Motor Vehicles Act, 1939 has held that where no salary certificate is produced nor employer was examined, claim as to the salary earned by the accident victim may be accepted, if there is no reason to doubt the testimony of the claimant and if such claim is reasonable and does not appear to be exaggerated.

20. In the instant case as discussed above, the claimant who is the father of the'' deceased workman has made a categorical statement before the learned Commissioner about the monthly salary of his son being Rs. 4,000. The owner of the vehicle (respondent No. 1 herein) in the written statement has pleaded that the monthly salary of the deceased was Rs. 2,000 and, therefore, the burden lies on the employer to adduce evidence before the learned Commissioner to prove that the monthly salary was Rs. 2,000 when the claimant has discharged his initial burden to prove the monthly wages. Neither the employer nor the Insurance Company took any steps to prove the monthly salary of the deceased workman, though the employer has disputed the claim of the claimant regarding the monthly wages and, therefore, the learned Commissioner has to accept such positive statement of the claimant, as, such claim is not unreasonable and does not appear to be exaggerated. But the learned Commissioner has taken the monthly wages of the deceased workman as Rs. 2,000 solely on the basis of the pleading of the employer in the written statement without there being any evidence to that effect on record adduced by the employer or by the Insurance Company. The Insurance Company has also failed to summon the employer and did not take any steps for production of relevant register/documents relating to the monthly salary by the employer to prove that the monthly salary of the deceased was not Rs. 4,000 as claimed by the claimant and, therefore, the inference has to be drawn against the employer and in favour of the claimant.

21. The learned Commissioner in the instant case has awarded the amount of compensation under the Act by taking the monthly wages as Rs. 2,000 and by applying the relevant factor as 135.56 on the basis of the age of the claimant. As already held above, the relevant factor would be 221.37 as the age of the deceased workman was 22 years and his monthly wages was Rs. 4,000 as deposed by the claimant before the learned Commissioner. Therefore, the amount of compensation payable u/s 4 of the Act would be 50% of Rs. 4,000 multiplied by 221.37, which comes to Rs. 4,42,740 (Rupees four lakh forty two thousand seven hundred forty). The claimant shall also be entitled to a sum of Rs. 1,000 (Rupees one thousand) towards the funeral expenses, as the said amount is payable by the employer under Sub-section (4) of Section 4 of the Act.

22. In view of the aforesaid discussions, we hold that the claimant is entitled to Rs. 4,43,740 (Rupees four lakh forty three thousand seven hundred forty) as compensation u/s 4 of the Act for the death of his son as a result of the injuries sustained by him arising out of and in course of his employment as driver. The said amount of compensation shall carry simple interest @ 7% per annum from the date of filing of the ''application by the claimant before the learned Commissioner, till the date of payment. There being no dispute regarding the insurance coverage by virtue of the insurance policy issued by the respondent No. 2, the amount so awarded is to be paid by the respondent No. 2, Insurance Company. Needless to say, the amount already received by the appellant shall be deducted from the compensation awarded herein.

23. The appeal is accordingly allowed. The compensation awarded by the learned Commissioner is modified to the extent indicated above. Considering the facts and circumstances of the case, the parties are directed to bear their own coats.