Govind Kana Vs Kana Tida Mokaria

None

Court: Gauhati High Court

Date of Decision: July 13, 1988

Acts Referred:
Evidence Act, 1872 â€" Section 19, 2, 22, 4

Citation: (1990) 1 ACC 96

Hon'ble Judges: P.M. Chauhan, J; A.P. Ravani, J

Bench: Division Bench

Judgement

A.P. Ravani, J.
Admit Mr. A.H. Mehta, waives services of notice on behalf of respondent No. 2. By consent of the parties the matter is

order to be heard today.

2. The appellant is a workman who has lost before the Commissioner for Workmen"s Compensation and hence preferred this appeal. It was his

case that on May 26, 1984 while he was in employment of respondent No. 1 he was driving the truck belonging to respondent No, 1 and he met

with an accident and received serious injuries; that he was receiving monthly wages of Rs. 1,000/- per month; that after the accidental injury he

took treatment and even after the treatment he is suffering from permanent partial disability and therefore he is entitled to claim compensation from

the respondents. Respondent No. 2 is the Insurance Company with which the truck in question was insured by respondent No. l. The appellant-

petitioner claimed Rs. 60,000/-as and by way of compensation and also claimed penalty to the extent of 50 percent of the amount of

compensation and prayed that the aforesaid amount be directed to be paid to him with 12% interest per annum. The petitioner prayed for other

expenses of Rs. 10,000/- also.

3. Opponent No. l, though served with the notice, has not remained present and the application proceeded ex-parte against him. The Insurance

Company appeared and raised several contentions before the Commissioner. The learned Commissioner, after hearing the parties came to the

conclusion that the appellant was employed by opponent No. 1 and therefore he was a workman within the meaning of the Act; that the truck was

duly insured with opponent No. 2-Insurance Company and that both the opponents were jointly and severally liable for the amount of

compensation as claimed by the appellant; that the wages of the workman was Rs. 1,000/- per month; and the workman has received serious

injuries on account of the accident which took place on May 26,1984 when the workman was driving the truck in question. Still, however, the

learned Commissioner held that the workman had been not examined by the medical officer concerned and therefore it cannot be said that he had

proved the contents of the medical certificate and therefore the applicant has failed to prove the disability and hence he is not entitled to claim any

amount as and by way of compensation from the opponents. Hence the appellant-workman has preferred this Appeal. In this appeal also the

employer-respondent No. 1, though served has remained absent. Only the Insurance Company has appeared.

4. It is an undisputed position that the appellant was employed as a driver by respondent No. \. While he was working as driver the accident

occurred. It is held proved that the accident arose out of and during the course of employment. On account of such accident he received injury

which resulted in permanent partial disablement. The applicant had produced a list of documents at Exh. 107. Thereby two certificates have been

produced on record. One is that of Dr. K.K. Mittal, dated May 21,1986 and Anr. is that of Irwin Hospital, Jamnagar, dated March 19, 1985. In

the list of documents an endorsement is made by the learned Advocate representing the other side , to the effect that he had no objection if the

documents are exhibited. Pursuant to the aforesaid endorsement Exh. 108 is given to the Medical Certificate issued by Irwin Group of Hopsitals,

Jamnagar. No exhibit is given to the certificate issued by Irwin Group os Hospitals, Jamnagar. No exhibit is given to the certificate issued by Dr.

K.K. Mittal. We fail to understand how the certificate issued by Dr. K.K. Mittal has not been given pucca exhibit by the Court. Once the other

side has made an endorsement to the effect that there was no objection to exhibiting the document mentioned in the list, both the documents should

have been given pucca exhibit. More over in his evidence the applicant has stated that he had taken disability certificate of 80 per cent from Dr. K.

K. Mittal and that he had produced the said certificate at mark 107/2 and in that certificate the Doctor has signed in his presence. The aforesaid

deposition has been recorded, on June 25,1986. The endorsement on list Exh. 107 has also been made by the learned Counsel appearing for the

other side on the same date. Therefore it is clear that during the course of the evidence of the applicant, application Exh. 106 was submitted

together with the list of documents requesting that the documents be permitted to be produced. In the list of documents (Exh. 107) the Advocate

for the other side has made endorsement to the effect that he had no objection if the documents are exhibited. Despite the aforesaid position of

record the learned Commissioner has observed to the effect that these certificates are exhibited, but the exhibition of the certificate is not sufficient

to prove the contents"". We fail to understand how such a view could be taken by the learned Commissioner. Once the medical certificates have

been exhibited with .the consent of the other side without any reservation whatsoever, the contents of the medical certificates have got to be read

as part of the evidence. This would be so even if the strict principles of CPC and Evidence Act are made applicable to the proceedings under

Workmen''s Compensation Act. But as per the settled legal position the provisions of CPC and Evidence Act do not apply to the proceedings

under Workmen''s Compensation Act.

5. In the case of Chiman Surakhia Vasava Vs. Ahmed Musa Ustad and Others, this High Court, in para 4 of this judgment, has observed as

follows:

...and the learned Commissioner has not been able to come out of the hidebound thinking influenced by the provisions of the CPC and Evidence

Act with which he is more familiar as Civil Judge, Senior Division. He ought to have realised that the functions and duties of the Commissioner are

radically different than that of a Civil Judge, Senior Division. It is unfortunate that the learned Commissioner who appears to have been obsessed

by the procedural rules and technicalities of CPC and Evidence Act is not sufficiently aware about the underlying principle and object of the

Workmen''s Compensation Act, 1923 (hereinafter referred to as "the Act"). In the statement of objects and reasons articulated at the time of

moving the Bill which ultimately resulted in passing the Act, it is stated:

...The growing complexity of industry in this country, with the increasing use of machinery and consequent danger, to workmen, along with the

comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from

accidents.

In the statement of objects and reasons, it is further stated:

The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in

the course of their employment. Compensation will also be given in certain limited circumstances for disease....

...At the same time, on unanimous recommendation of the Committee, provision has been made for Special Tribunals to deal cheaply and

expeditiously with any disputes that may arise and generally to assist the parties in a manner which is not possible for the ordinary Civil Courts''.

6. The aforesaid extract from the statement of objects and reasons for passing the Act clearly indicates that the legislature intended to see that

these disputes are cheaply and expeditiously dealt with by Special Tribunals. It was felt by the legislature that it was necessary ""generally to assist

the parties in a manner which is not possible for the ordinary Civil Courts"". Thereafter, in the same decision, after refering to certain provisions of

the Act and the Rules framed under the Act, this Court has further observed as follows:

Therefore, it is obvious that the Commissioner is not bound to follow the procedure prescribed for trial of cases in Civil Courts, nor is he bound by

strict rules of evidence. As provided u/s 10-A of the Act, he can even act on information received by him from any source regarding fatal accident

and call upon the employer to explain as to under what circumstances death had occurred. He can also ask for the expiation of the employer

whether he is or is not liable to deposit the compensation on account of the death. This provision indicates that he can even act suo motu, In our

country, where most ""of the labour population suffers from curse of illiteracy and poverty and is incapable of entering into legal fight with the

employer, it is rather his (Commissioner''s) duty to remain alert and vigilant. Wherever necessary with a view to see that the provisions of the Act

are strictly enforced, he must act suo motti. With a view to simplify the procedure, the nature of application to be made and the details to be given

in the application for compensation are mentioned in Section 22 of the Act. This provision clearly indicates that the rules of pleadings embodied in

the CPC are not to be applied to the proceedings before the Commissioner. It may also be noted that Section 19 of the Act clearly bars the

jurisdiction of Civil Courts.

In above view of the matter the learned Commissioner has completely erred in not taking into consideration the contents of the Medical Certificates

produced on record.

7. The injuries noted in the medical certificate Exh. 108 are as follows:

1. Pain, swelling & deformity on middle of left upper arm humerus.

2. CLW 1"" X 1\2"" X 1\4"" on Lt. Frontol region.

3. CLW 1"" + 1\4"" x 1\4"" on Lt. Lower eye lid.

4. CLW 1\2"" X 1\4"" x 1\4"" on Rt. angle of mouth.

5. Blood Clot in both nose.

6. Abrasion 2"" x 1"" on Lt. ankle.

7. Pt. Conscious - Eochimois around Lt. eye.

Thereafter the X-ray reading is mentioned which reads as follows:

Lt. hip shows # # pubic rami both side.

Rt. hip shows # # pubic rami & impacted # # neck of famur.

Chest shows # # ribs (Lt.) from 4 to 6 ribs.

Lt. arm shows # # M/3 of Lt. Humerus & neck of humerus.

After obtaining the aforesaid certificate the applicant had taken treatment from a private doctor. Dr. K.K. Mittal has issued certificate which is on

record. Therein he has given estimate of disability to the extent of 80 per cent. Once the contents of the medical certificates are taken into

consideration it is obvious that the finding arrived at by the learned Commissioner that the workman has not proved disability cannot be sustained.

8. It may be noted that the accident occurred on May 26, 1984. Thereafter amendment in the Act has been brought into force on July 1, 1984.

Therefore the provisions of the Act as it stood prior to the amendment will have to be applied. We are, therefore, applying the provisions of

Section 4 of the Act as it stood prior to the amendment. There is no dispute on the point that the law as it stood prior to the amendment would be

applicable to the facts of the case.

9. Having regard to the nature of injury it is evident that the appellant-workman had not received any injury which falls in any of the items of

Schedule-I to the Act. Therefore, the amount compensation will have to be determined by having recourse to Section 4(1)(c)(ii) of the Act.

Section 4(1)(c)(ii) of the Act provides that in the case of an ""injury not specified in Schedule-1 such percentage""of the compensation payable in the

case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury be paid to the workman.

In this view of the matter it will have to be determined on the basis of the evidence recorded by the learned Commissioner as to what is the loss of

earning capacity sustained by the workman.

10. For this purpose we may refer to the definition of partial disablement occurring in Section 2(g) of the Act. The disablement will be of a

permanent nature which would reduce the earning capacity of the workman in every employment which he was capable of undertaking at the time

of accident. In the instant case the injury does not fall in any of the items of Part II of the Schedule-I of the Act. From medical certificates and the

deposition of the workman it is evident that the partial disablement which has resulted on account of the injury is of permanent nature. The

appellant-workman has deposed to the effect that he is not in a position to sit for a longer time and he is not in a position to do driving work or any

other manual work. It may be noted that the accident took place on May 26,1984 and the appellant gave the aforesaid evidence on June 26,

1986. The certificate of Dr. K.K. Mittal is dated May 21,1986. Therein it is specifically mentioned that the disablement is of permanent nature.

Thus it would be reasonable to infer that the disablement caused is of permanent partial nature.

11. In the cross-examination of the appellant, it has been brought out that even at the time of deposition the witness has got driving licence and his

licence was renewed in the year 1986. Therefore it was contended that the appellant was in a position to do the same work and there is no

permanent partial disablement. However, simply because the driving licence is renewed it cannot be said that the workman could drove the vehicle.

There is nothing on record to show that the driving licence was renewed after taking necessary physical tests.

12. In the facts and circumstances of the case, particularly in view of the medical certificate issued by Dr. K.K. Mittal, it would be reasonable to

infer that the loss of earning capacity will be commensurate with the physical disability which is to the extent of 80 per cent.

13. On the aforesaid basis it is clear that the appellant- workman would be entitled to claim compensation on the basis that his earning capacity has

been reduced to the extent of 80%. There is no dispute with regard to the fact that the appellant- workman was earning Rs. 1,000/- as wages per

month. It is held by the learned Commissioner that the salary of the workman was Rs. 800/- and that he was getting Rs. 200/- as allowance. As

per the schedule applicable at the relevant time the workman would have received Rs. 42,000/-, had there been 100% permanent disablement.

Eighty per cent (80%) of Rs. 42,000/- would be Rs. 33,600/-. Thus the appellant-workman would be entitled to Rs. 33,600/-. Having regard to

the facts and circumstances of the case no the concession made by the learned Counsel for the appellant-workman that the workman does not

claim penalty and interest and costs of the appeal as well as the cost of proceedings before the learned Commissioner, we do not pass any order

as regards the amount of penalty, interest and cost. There is no dispute with regards to the fact that at the relevant time the vehicle was insured with

respondent No. 2-Insurance Company. The Insurance Company has not disputed its liability. In this view of the matter the Insurance Company,

i.e. respondent No. 2, is also held liable to pay the amount of compensation to the workman.

14. In the result the appeal is allowed. The judgment and order passed by the learned Commissioner is reversed and set aside. The respondents

are jointly and severally held liable to pay Rs. 33,600/- the workman. The respondents are directed to deposit the aforesaid amount before the

Workmen''s Compensation Commissioner, Jamnagar, on or before October 31,1988. If the amount is not deposited by the stipulated date, the

respondents will be liable to pay interest at the rate of 15% per annum from the date of this order on the amount awarded till realisation. As and

when the amount is deposited with the Commissioner, an amount of Rs. 7,600/- will be paid to the appellant- workman. Rest of the amount will be

deposited by the learned Commissioner in fixed deposit for a period of five years in any nationalised bank. Appeal is allowed accordingly with no

order as to costs.