

Shri Ram Dal Mills and Others Vs Rama

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Feb. 25, 2003

Acts Referred: Workmens Compensation Act, 1923 " Section 30, 4, 4A, 4A(3)

Citation: (2003) 97 FLR 563 : (2003) 3 MPHT 269

Hon'ble Judges: A.K. Gohil, J

Bench: Single Bench

Advocate: Pankaj Bagdiya, for the Appellant; C.S. Ahirwar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Gohil, J.

The appellant has filed this appeal u/s 30 of the Workmen Compensation Act, against the award dated 7-6-2002, passed

by the Commissioner, Workmen Compensation, Indore, in W.C. Case No. 10/93 NF, granting compensation to the claimant/respondent, to the

tune of Rs. 39,846/- with interest @ 6% p.a. from the date of accident till payment. The learned Commissioner has also imposed penalty @ 25%

of the compensation. Respondent also filed cross-objection.

2. Brief facts of the case are that respondent Rama was working as a daily wages labourer in the appellant's Dal Mill. He was engaged for

polishing pulses. On 12-11-92, during his duty hours, when he was putting the pulses in the machine, his hand was crushed by the machine, as a

result of which he received injury in the hand. Thereafter, he was referred to the hospital and the matter was also reported to the police and FIR

was lodged. He was getting Rs. 30/- per day as wages. The claim was contested and witnesses were examined. After appreciating the evidence

on record the learned Commissioner accepted the medical evidence and has held that the claimant suffered 40% disability in the hand and after

applying formula prescribed in the Act, worked out a total compensation of Rs. 39,846/- with interest and penalty, against which the owner of the

Mill has filed this appeal.

3. I have heard Shri Pankaj Bagdiya for the appellants and Shri Ahirwar for the respondent and perused the record.

4. Submission of Shri Bagdiya is that as per the statement of Dr. Vijay Kumar Jain (P.W. 4) the permanent disability is not upto 40%, but is upto

10 to 12%, for the loss of working capacity of the hand. His further submission is that the Tribunal has wrongly awarded compensation which is on

the higher side and has also awarded penalty, without any notice or opportunity of hearing to the appellants, while notice is mandatory u/s 4A of

the Workmen Compensation Act. Learned Counsel for the respondent supported the award and further pressed cross-objection and prayed for

enhancement of the award.

5. From the evidence on record it is clear that the hand of Rama was crushed in the machine during the course of his employment and the same

was totally damaged. The hand was taken out from the machine after stopping it and opening the same. As per the evidence of Dr. Vijay Kumar

Jain (P. W. 4), on 10-11-92 Rama was admitted in a private hospital and on 17-11-92, without intimation he himself left the hospital.

Subsequently, he was again examined by the doctor on 15-5-95. His X-ray was also taken. In the opinion of doctor there may be variations in the

disability, but the claimant and other witnesses have categorically stated that his hand is damaged and he is not in a position to work with the hand.

Therefore, it appears that looking to the evidence on record the Tribunal has rightly awarded a compensation of Rs. 39,846/-, on the basis of the

injury received by the respondent. No doubt, there is variation in the percentage of the disability, but when the hand of a worker has become

totally damaged, then the same should be treated as loss of hand and also loss of his working capacity.

6. Thus it is held that the Tribunal has rightly awarded compensation of Rs. 39,846/-, after assessing the same on the basis of given formula in the

Workmen Compensation Act. I do not find that any case of involvement of any substantial question of law is involved in the appeal for

consideration by this Court. It can be held that it is a case based on the question of fact relating to the assessment of evidence on record.

Therefore, I do not find any scope for interference in the finding of fact recorded by the Commissioner for Workmen Compensation. Accordingly,

there is no merit in this appeal so far as the question of assessment of compensation is concerned. The interest awarded is not proper, it should be

@ Rs. 12% p.a. instead of 6%. Therefore, it is modified and enhanced from 6% to 12% p.a. on the sum assessed.

7. The Commissioner for Workmen Compensation has also awarded penalty upto 25% on the aforesaid amount. It is true that u/s 4A of the Act

the penalty can only be awarded after giving a show-cause notice as to why it should not be passed and after providing reasonable opportunity to

the employer. For considering this objection of the employer, I have perused the claim petition as well as statements of the parties and also the

order-sheets maintained by the Commissioner for Workmen Compensation. The claimant has not claimed any penalty. The Commissioner for

Workmen Compensation has also not given any notice to the employer before imposing penalty. The proviso of Sub-section (3) of Section 4A is a

mandatory provision and without meeting the compliance of the same penalty cannot be imposed without giving show cause-notice and also

without providing reasonable opportunity of hearing to the employer.

8. Admittedly, in this case the Commissioner for Workmen Compensation has not complied the mandatory provision of law, therefore, I find that

the Commissioner has wrongly imposed penalty without following due procedure of law and, as such, to this extent this appeal deserves to be

allowed and it is held that the claimant is not entitled for any amount of penalty. Accordingly, the impugned award is modified to the extent that the

respondent/claimant shall not be entitled to recover the amount of penalty, as has been imposed by the Commissioner for Workmen

Compensation. As regards cross-objection, learned Counsel for the respondent could not satisfy me as to how and on what basis the amount of

award is liable to be enhanced, therefore, the cross-objection is also dismissed.