

(1974) 09 CAL CK 0024

Calcutta High Court

Case No: Civil Rule Case No. 175 of 1974

Oceanic Shipping
Agents (Pvt.) Ltd.

APPELLANT

Vs

Commissioners for
the Port of Calcutta

RESPONDENT

Date of Decision: Sept. 30, 1974

Acts Referred:

- Calcutta Port Act, 1890 - Section 126, 83, 84, 85, 86
- Dock Workers (Regulation of Employment) Act, 1948 - Section 5A
- Presidency Small Cause Courts Act, 1882 - Section 38

Citation: (1975) ACJ 202 : 79 CWN 147

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

Bench: Single Bench

Advocate: Harinarayan Mukherjee, for the Appellant; D.K. Choudhury, for the Respondent

Judgement

A.K. Janah, J.

This Rule was obtained against the judgment of the Full Bench of the Court of Small Causes, Calcutta, rejecting an application u/s 38 of the Presidency Small Cause Courts Act. The opposite party filed a suit against the Petitioner for recovery of a sum of Rs. 2413.43p. on account of compensation. The Plaintiff's case in short was as follows:

On January 20, 1967, an accident occurred in course of unloading of cargo from the ship S.S. Leipzig in the K. P. Dock. The Defendant Petitioner is admittedly the accredited agent for Calcutta of Veb Deutsche Seereederei Rostock who was the owner of the ship at the relevant time. It was alleged that as a result of the accident a porter of the Plaintiff, named Sadagar, sustained injury on his person. It was alleged that the porter Sadagar who was assisting the unloading operation of the cargo from the said vessel sustained severe injury while a load of two bundles of

billets was being released by a double-legged chain on a 5-ton trailer by the forepart derrick of Hatch No. 3 of the ship. The derrick then was operated by Mohd. Mainuddin, a winchman. During the unloading operation the inboard wire the said derrick was suddenly pulled up by the winchman resulting in a severe swing of the resting sling load which dashed against the bundles of billets lying on the ship's side of the trailer, thereby causing the bundle to fall on the quay, and ultimately the sling load struck the left leg of Sadagar. As a result of the injury the said porter was disabled from performing his usual duties from January 21, 1967 to February 21, 1968, and the Plaintiff had to pay a sum of Rs. 1354.47p. to him on account of his injury leave allowance and a sum of Rs. 1058.96p. as medical expenses. There was no dispute between the parties that the accident occurred due to the negligence of the winchman who was at the relevant time operating the derrick. It was alleged that the Defendant having failed and neglected to pay the above damages the Plaintiff had to institute the suit for the recovery of the said amount.

2. The suit was contested by the Defendant on the ground that the winchman, Mohd. Mainuddin, for whose negligence the accident occurred was not an employee of the agent or the Defendant inasmuch as he had been supplied by the Calcutta Dock Labour Board. The Defendant alleged that it was Calcutta Dock Labour Board which was liable on the ground that they supplied an in-efficient worker. The Defendant further pleaded that the suit was bad for non-joinder of necessary party i.e. Calcutta Dock Labour Board. The suit was at first dismissed by the trial court. Against the said decision there was an application u/s 38 of the Presidency Small Cause Courts Act filed by the Plaintiff. The Full Bench set aside the judgment and order of the trial court and sent back the suit on remand to the trial court for re-hearing. After the matter went back to the trial court the suit was decreed in favour of the Plaintiff. The trial court found that the accident occurred due to the negligence of the winchman, and as a result of the accident the porter, Sadagar, was injured, and also that the Plaintiff had to incur expenses of Rs. 2413.43p. on account of injury leave allowance and medical expenses for the injured workman. The trial court decreed the suit on the ground that the bye-laws framed under the Calcutta Port Act, 1890 provided that the Commissioners for the Port of Calcutta were entitled to pursue only the ship for anything done on its board, and the Defendant being the agent of the owner of the ship was liable for the compensation. The trial court also relied upon two decisions reported in [The Great Eastern Shipping Co. Ltd. Vs. The Commissioners for the Port of Calcutta and Another](#), and Vizagapattam Dock Labour Board v. Stevedore Association AIR 1970 S.C. 1625 for fixing the liability upon the Defendant.

3. Against the decision of the trial court the Defendant filed an application u/s 38 of the Presidency Small Cause Courts Act, which was rejected by the Full Bench, as has already been stated.

4. The Full Bench found that the Dock Labour Board cannot be considered to be the employer of the dock worker and it is the registered employer to whom the dock worker is allotted who is the employer of the dock worker. The Full Bench further held that u/s 89 of the Calcutta Port Act, 1890, the master or agent of a ship was alone liable for any damage or mischief caused by any of the persons employed in the vessel. In this view the Full Bench rejected the application u/s 38. The present rule has been obtained against the said order of the Full Bench.

5. The point which requires consideration in this rule is whether the Defendant Petitioner is liable for compensation for the injury caused to the dock worker on account of the negligence of the winchman who was operating the derrick. There is no dispute that the winchman Mohd. Mainuddin who was in the reserve pool of the Calcutta Dock Labour Board was allotted duty to work for the Stevedore, Darashaw B. Carsetjew & Sons (P) Ltd. which was engaged by the Defendant Petitioner for the unloading work. The Full Bench has fixed the responsibility on the Petitioner on the basis of Section 89 of the Calcutta Port Act, 1890. Section 89 of the Calcutta Port Act provides as follows:

89. Magistrate to summon masters of vessel with respect to damage caused to wharves, etc.-

(1) In case any damage or mischief shall be done to any dock, wharf, quay, stage, jetty, pier or works constructed or acquired by the Commissioners under the provision of this Act, by any vessel, through the negligence of any person having the guidance or command thereof, or of any of the mariners or persons employee therein.

It shall be lawful for any Magistrate, having jurisdiction in the place where such damage or mischief is alleged to have been committed, on the application of the Commissioners, to issue a summons to the master of, or agent for, such vessel, requiring him to attend on a day and at an hour named in the summons to answer touching such damage or mischief:...

6. Section 89 therefore applies to a case where any damage or mischief is done to any dock, wharves, quay, jetty, pier or works constructed or acquired by the Commissioners under the provisions of the said Act. In the present case no damage or mischief was caused to any of the things mentioned in Section 89. Section 89 finds place in Chapter VII of the Calcutta Port Act, 1890. Chapter VII deals with the erection of wharves, quay, stage, jetty, pier or mooring. Section 83 which is the first section under Chapter VII provides that wharves, etc. are not to be erected by private person without assent of the Central Government within the Port area. Section 84 provides for penalty for unlawfully erecting wharves, etc. Section 85 empowers the Commissioners for the Port of Calcutta to remove wharf, etc. if erected without the limits of the Port if the limits of the Port are subsequently extended to that area. Section 86 require the Commissioners to provide for the use

of the public sufficient and convenient wharves, etc. where such wharves etc. have been erected or destroyed under the powers conferred by Section 85.

Similarly, Section 87 requires the commissioners to provide for wharves, etc. for the use of Customs Officers. Reading these sections together it is quite clear that the power conferred upon the Magistrate u/s 89 relates only to a case where any damage or mischief has been caused to the properties of the Commissioners, namely, wharves, quay, stage, jetty, pier or mooring. Section 89 of the Calcutta Port Act can, therefore have no application in the present case. The Full Bench relied upon the observation made in [The Great Eastern Shipping Co. Ltd. Vs. The Commissioners for the Port of Calcutta and Another](#), for coming to the conclusion that the Petitioner was liable for compensation. That was not a case of any injury caused to any dock worker but it was a case where the property of the Commissioners was damaged due to the negligent handling of the same during the loading operation. In my view the decision in that case can be no authority for fixing the liability on the Petitioner in the facts of the present case.

7. An argument was advanced on behalf of the Petitioner both in the courts below as well as in this Court that the Dock Labour Board was the employer of the dock worker, Mohd, Mainuddin, and therefore, the Dock Labour Board was liable for compensation. It was argued that Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 which empowers the Government to establish a Dock Labour Board for a Port or a group of Ports provides that such a Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and may sue or be sued by its name. From this provision it was sought to be argued by the learned Advocate appearing for the Petitioner that in the present case the contract was with the Dock Labour Board, and therefore, the suit should have been filed against it I am unable to appreciate this argument advanced on behalf of the Petitioner. Section 5A of the aforesaid Act undoubtedly provides that a Dock Labour Board may enter into a contract and it may sue or be sued. But that does not necessarily mean that the Dock Labour Board will be liable for any claim for compensation that may arise in connection with any work done by a dock worker. Before the Dock Labour Board can be held to be liable for any claim for compensation it must be proved that the Dock Labour Board is the employer of the dock worker concerned. In the case of Vizagapattam Dock Labour Board v. Stevedore Association AIR 1970 S.C. 1625 it has been held that the dock worker are not employees of the Dock Labour Board and no relationship of employer and employee exists between the Dock Labour Board and the dock labour. The provisions of the Vizagapattam Dock Worker (Regulation and Employment) Scheme, 1959, are similar to the regulation applicable to the dock workers in Calcutta, and the decision of the Supreme Court in that case applies to the present case. In view of the said decision it must be held that the Calcutta Dock Labour Board is not the employer of the winchman for whose negligence the accident occurred, and as such, the Dock Labour Board is not liable for

compensation.

8. But this finding is not sufficient to dispose of the suit. In order to pass a decree in favour of the Plaintiff it must be established that the Defendant is the employer of the dock worker, or that the Defendant is otherwise liable for compensation under the law for the injury caused to the dock worker. I have already held that Section 89 of the Calcutta Port Act, 1890, does not make the Defendant liable for compensation in the present case. The winchman, Mohd. Mainuddin, due to whose negligence the accident occurred, was a "registered dock worker" in the "reserve pool" of the Calcutta Dock Labour Board Sub-clause (n) of Clause 3 of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956 (hereinafter referred to as "scheme") provides that a "registered dock worker" means a dock work whose name is, for the time being entered in the register or record. Sub-clause (o) of Clause 3 provides that a "registered employer" means a stevedore whose name is, for the time being entered in the employers' register. Sub-clause (p) of Clause 3 of the scheme provides that "reserve pool" means a pool of registered dock workers who are available for work and who are not for the time being in the employment of a registered employer or a group of dock employers as monthly workers. Clause 37 of the scheme which makes provisions regarding obligations of registered dock workers provides in Sub-clause (3) of the said clause that a registered dock worker in the reserve pool who is available for work shall not engage himself for employment under a registered employer unless he is allocated to that employer by the Administrative Body. Sub-clause (4)(b) of the said Clause 37 provides that a registered dock worker in the Reserve Pool who is available for work shall carry out the direction of the Administrative Body and shall accept any employment in connection with dock work whether in the category in which he is registered or in other category for which he is considered suitable by the Administrative Body. Then Sub-clause (5) of the said Clause 37 provides that a registered dock worker who is available for work when allocated by the Administrative Body for employment under a registered employer shall carry out his duty in accordance with the direction of such registered employer or his authorised representative or supervisor and rules of the port or the place where he is working. Similarly, Clause 38 of the said scheme which makes provisions regarding obligations of registered employer provides in Sub-clause (2) of that clause that subject to the provisions of Clause 18 and the relaxation given in Clause 18 (3) a registered employer shall not employ a worker other than a dock worker who has been allocated to him by the Administrative Body in accordance with the provisions of Clause 11(e). Sub-clause (5)(i) of Clause 38 provides that a registered employer shall pay to the Administrative Body in such manner and at such a time as the Board may direct the levy payable under Clause 52(1) and the gross wages due to daily workers. Then again, Clause 42 of the scheme provides that unless otherwise provided for in the scheme it shall be an implied condition of the contract between registered dock worker in the categories of winch man, Sirdar, mate and stevedore Mazdoor (whether in the reserve pool or in the monthly register) and a

registered employer that the rates of wages, allowance and overtime, hours of work, rest interval and pay in respect thereof and other condition of the service shall be such as may be prescribed by the Board in such category subject to Clause 2, 3, 4, 5, 6 and 7. All these provisions made in the scheme go to show that although the Dock Labour Board may be called the employer of registered dock worker in a limited sense it is the registered employer to whom a registered dock worker may be allocated for the time being, who is the employer of the dock worker in the true sense of the term. In [A.C. Roy and Co. \(Private\) Ltd. Vs. Taslim and Another](#), a Division Bench of this Court has held that where a registered dock worker in the reserve pool is allocated by the Board to a registered employer then for the time being and for the purpose of the work concerned the worker becomes employed under the registered employer. In view of this decision and in view of the relevant provisions of the scheme which I have discussed above it must, therefore, be held that the Defendant was not the employer of the dock worker and was the stevedore who was the employer of the dock worker at the time of the accident. The liability for the compensation was accordingly upon the stevedore who was the employer of the dock worker, and not upon the Defendant. The trial court had relied upon Bye Laws 5, 7, 21 and 38 of the Bye Laws of the Port of Calcutta and came to the conclusion that by reason of the said Bye Laws the owner of the ship was liable for compensation in the present case. In my view there is nothing in the said Bye Laws which can fasten the liability upon the Petitioner for the accident which has occurred in the present case. On the other hand the amended Bye Laws No. 4A introduced by notification No. By 2A dated 13th August, 1960 under the provisions of Section 126 of the Calcutta Port Act, 1890 and published in the Calcutta Gazette dated 18th August, 1960, Part II page 340 imposes, inter alia, the following condition for the grant of stevedoring licence:

Stevedoring Licence-4A (a)... (ii) Grant of stevedoring licence under Clause (i) shall be subject to the applicant for such licence having fulfilled the following conditions viz:...(d) That the applicant has financial ability to meet obligation to his workers and staff in the matter of wages and of compensation payable under the Workmen's Compensation Act and that he furnishes a suitable guarantee in this behalf from the bank as approved by the Commissioners, Chief Accountant and Financial Advisor, or deposits with the Commissioners" security of such amount as prescribed by the Commissioners from time to time, in the form of cash or in public security or of such other security as may be approved by the Chief Accountant and Financial Advisor in this behalf....

9. This provision contained in Bye Law No. 4A clearly indicates that the stevedores are liable for compensation to be paid to the registered dock workers employed by them. In the present case as has already been noticed the Petitioner engaged a stevedore for unloading the ship's cargo and the said stevedore was the registered employer of the injured dock worker. Therefore, it is the stevedore who is liable for compensation to the injured dock worker and the Petitioner can have no liability in

the matter. The courts below were, therefore, wrong in decreeing the suit against the Petitioner.

This Rule is accordingly made absolute. The judgment and decree of the courts below are set aside and the suit is dismissed. In the circumstances of the case I direct the parties to pay and bear their respective costs throughout.