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58 CWN 591

Calcutta High Court

Case No: Appeal from Original Order No. 290 of 1952

Jitendra Nath Nath — APPELLANT

Vs

Sardha — RESPONDENT

Date of Decision: March 5, 1954

Acts Referred:
Workmens Compensation Act, 1923 â€" Section 30

Citation: 58 CWN 591

Hon'ble Judges: Chakravartti, C.J; S.R. Das Gupta, J

Bench: Division Bench

Advocate: Nalini Kanta Mukherjee and Jnan Chandra Roy, for the Appellant;Phanindra Kumar Sanyal, for the Respondent

Final Decision: Dismissed

Judgement

Chakravartti, C.J.
This is an appeal by one Jitendra Nath Nath, partner Mahadeb Nath and Sons, against an order dated the 25th July,

1952, passed by the Commissioner for Workmen''s Compensation, whereby he awarded a sum of Rs.3,000 to the respondent, Sardha, as

compensation on account of the death of her husband, Choudhury Ram, who was alleged to have been employed under the appellant. The

respondent''s case was that her deceased husband, Choudhury Ram, was employed as a coolie under the appellant and that on the 3rd of

September, 1950, he had suffered an injury in his spine, while employed in the performance of his duties, which ultimately resulted in his death. The

monthly wages of the deceased were claimed to have been Rs. 80 to Rs. 100 per month and on the basis of that scale of wages, compensation of

an amount of Rs. 3,000 was claimed.

2. The respondent''s case, as more fully made out by the evidence led on her behalf, was as follows. Choudhury Ram was employed as a coolie in

the appellant''s firm and his duty was to lift and move bags for the purposes of the appellant''s business. On the day of the occurrence, his brother.

Madhuri Ram, and another coolie, named Prasadi, who were also employed under the appellant, were weighing oilcake bags and the deceased

Choudhury Ram was bringing them from the stack for the purpose of being weighed. As he was doing so, certain bags of salt fell upon him and

struck him on the spine as a result of which he was felled on the ground.

3. Thereafter, he was removed to the Medical College Hospital and transferred therefrom, subsequently, to the Marwari Hospital where he lived

on for eight or nine months, but where he died without being discharged. The further case of the applicant was that sixteen or seventeen men

worked in the appellant''s concern and that, therefore, her deceased husband was a workman within the definition contained in the Workmen''s

Compensation Act.

4. The appellant admitted the accident and admitted further that it had occurred in the way alleged, but it was pleaded that the deceased,

Choudhury Ram, was not employed under the appellant at all. but was in the employment of the keeper of an adjacent shop, named Gostha Behari

Ghose. It was pleaded further that even assuming that Choudhury Ram had been employed under the appellant, he was still not a workman within

the meaning of the Act, inasmuch as his employment did not satisfy any of the various definitions to be found in the Schedule. It was pleaded, in the

third place, that in any event the death had not been caused by the injury received and, lastly, that the wages drawn by the deceased person were

not Rs. 80 to Rs. 100 as alleged, but only Rs. 35 per month.

5. On those pleadings, the Commissioner raised five issues. The first of them asked whether the deceased was employed under the appellant at all;

the second asked whether he was a workman within the definition contained in the Act; the third asked whether the accident had arisen out of and

in the course of the employment of the deceased; the fourth asked whether the death had resulted from the effect of the injury; and the fifth and the

last issue asked what the rate of the wages of the deceased person had been. Evidence was led on both sides. The Commissioner, after

considering the evidence, answered all the issues in favour of the applicant and awarded her the whole amount she had claimed. Thereafter, the

present appeal was preferred.

6. In support of the appeal, the same four grounds as had been taken in the written statement of the appellant were urged before us. It was

contended that the Commissioner had erred in holding that Choudhury Ram had been employed under the appellant. He had also erred, so it was

contended, in holding that the deceased person was a workman within the meanin- of the Act. The third error, according to the appellant, was to

hold that the death had resulted from the effect of the injury. The fourth error, it was lastly contended, was that even on the basis of the evidence

which the Commissioner had himself accepted, there was a mathematical error in the computation of the amount of compensation awarded by him.

7. On behalf of the respondent it was objected by Mr. Sanyal that the first ground concerned a pure question of fact and could not be entertained

in view of the provisions of the first proviso to section 80(1) of the Act, It was contended that the appeal given by the Act was only an appeal on

Questions of law and if questions of could be one into at all, the; to be questions involved in questions of law to which findings of the Commissioner

might have given rise. It was brought to our notice that the proviso had been construed in that sense by the High Courts of Nagpur, Lahore and

Rangoon, but Mr. Sanyal very fairly also informed us that a somewhat contrary view had been taken in a decision of Court in Central Glass

Industries Ltd. Vs. Abdul Hossain, .

8. Had it been necessary to decide this question in the present appeal. I would have to examine the decisions of this Court more closely. It appears

to me, however, that the proposition laid down in the Calcutta case cited goes a little beyond a previous decision of this court in Gouri Kinkar

Bhakat v. Messrs. Radha Kissen Cotton Mills (2) (37 C.W.N. 81), although it is stated that the learned Judges were following the earlier case. In

both the cases, the question was whether the injury had been caused in the course of employment and had ari out of it and, fairly read, the

decisions do not seem to lay down anything more than that in deciding such a question, which was certainly a mixed question of fact and law,

matters of fact could be gone into, though there is an observation of a wider character in the former case. The question raised in the present case,

however, is one entirely unrelated to the question of law urged and speaking for myself, I have very grave doubts whether such a question is at all

admissible in an appeal u/s 30 of the Act.

9. The learned Advocate appearing for the appellant did not, however, contend that a pure question of fact, unrelated to any question ""of law,

could be raised in an appeal under the Act. All that he contended was that the first question which he had raised was, in the circumstances of the

present case, itself a question of law, inasmuch, as the Commissioner had proceeded on no evidence at all and he submitted that he did not wish us

to regard the question in any other way. That relieves us from the necessity of deciding the objection of Mr. Sanyal on its merits.

10. I am entirely unable to understand how it could possibly be contended on the facts of the present case that any question of law is involved in

the contention that the deceased person was not employed under the appellant at all. The question is not one of the kind of relationship subsisting

between the two. but a question as to whether any relationship existed at all. On the question as to whether Choudhury Ram had been employed

under the appellant or under Gostha Behari Ghose, there was a considerable body of evidence adduced on the applicant''s side and if the

Commissioner gave undue weight to that evidence and less weight than was due to the evidence led by the appellant, any error he might have

committed was an error of fact and not an error of law at all. As is elementary, misappreciation of evidence or insufficiency of evidence is not a

question of law. though the absence of evidence is. It can by no means be said in the present case that there was no evidence in support of the

finding of the Commissioner. It is true that there was also evidence on the appellant''s side, but if that evidence did not appeal to the Commissioner,

it can by no means be contended that he was bound as a matter of law to believe that evidence.

11. In view of the position indicated above, I do not consider it necessary to examine on our own account the evidence on the question of the

employment of Choudhury Ram under the appellant. The view usual to take in such cases is to say that there was evidence before the

Commissioner on which he could come to the conclusion at which he had arrived and if such be the state of the evidence, there is nothing which

can be urged before the Appellate Court. Nevertheless, we were taken through the evidence in meticulous detail and at the end of that process, we

do not feel persuaded by any means that the view taken by the Commissioner is not a view which could fairly be taken. For one thing, there seems

to have been no cross-examination at all on the really material points of the two principal witnesses on behalf of the applicant. The learned

Advocate for the appellant referred again and again to the evidence adduced on his side, but could say nothing as to why the uncross-examined

evidence on the side of the applicant could not be accepted. In my view, the present case is not one where any ground exists for interference with

the finding of fact arrived at by the Commissioner on the first question.

12. That takes me to the only question of law urged in the appeal. It was contended that the deceased, even if he was employed under the

appellant, was not a workman as contemplated by the Act, because the only clause of Schedule II on which the Comnissioner had relied would

not apply to him. The clause in question is clause (xxvi) which reads as follows :

(xxvi) ""employed in the handling or transport of -goods in, or within the precincts of,--

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons

have been so employed, or

(b) any market in which on any one day of the preceding twelve months one hundred or more persons have been so employed.

13. The contention of the learned Advocate for the appellant was that clause (xxvi) required that the place where the workman is employed should

be either a warehouse or some place analogous thereto. He contended that the ruling consideration running through all the clauses of the schedule

was the risk involved in the employment concerned and that, he contended, was an indication that when the Legislature said ""any warehouse or

other place in which goods are stored"", it had in mind, besides warehouses, only such other places as would be comparable with a warehouse in

size, in the quantity of the goods stacked and, therefore, in the elementary amount of the danger involved in handling the goods stored therein.

Support for that construction was sought to be drawn from clause (iii) of the Schedule as well.

14. I am entirely unable to understand how any one can read into el. (xxvi) all that the learned Advocate saw in it. The words used by the

Legislature are plain. They are ""any warehouse or other place in which goods are stored."" It is not ""any warehouse or other such place"". The

obvious object of the clause is to include persons employed in handling or in the transport of goods which may be stored in some place. It is the

movement of stored goods, or to put it in another way, the storage of goods and the difficulty of or the risk in handling such goods which seems to

me to he the basis of the clause. I can see no warrant whatever for holding that the place where the goods are stored should always be a large

place which may reasonably be compared with a warehouse or that the Legislature thought that even when the same kinds of goods were handled,

the risk would be greater or smaller according as the place where they were stored was big or small. If the place in which a person is engaged in

handling goods is a place where goods are stored, the definition contained in clause (xxvi) is, in my view, satisfied, whether such place bears any

similarity to a warehouse or not.

15. 1 can see no relevancy whatsoever of clause (iii) of the Schedule to which the learned Advocate referred. That clause obviously refers to

labours expended on making raw-material suitable for use or transport or sale, and I am entirely unable to see any connection between the

activities contemplated way clause (iii) and those contemplated by clause (xxvi). In my opinion, no aid to the construction of clause (xxvi) can at all

be derived from clause (iii).

16. Coming now to the facts of the case, the evidence on the side of the applicant was that the place where Choudhury Ram had been employed

was a godown by which, as was explained later, was meant that it was a shop and a part of it was a godown. The appellant''s own evidence was

that his fried on its business in two rooms and that there was no separate godown ""One room"", he deposed, ""contains empty tins and coolies sleep.

Other room is Gadi Ghar, where articles are stored for sale."" It would appear that, unconsciously though it might be, the appellant was himself

using almost the language used in the Act itself and was describing his place of business as a place where goods were stored for sale. Such being

the place where the deceased was employed, the next question from the point of view of clause (xxvi) is the occupation in which the deceased was

employed. The evidence of Prasadi and Madhuri Ram who were persons similarly employed is that all of them acted as coolies and that at the

actual time of the occurrence, the deceased was ""dragging the bags of oil cakes-out of godown to verandah."" The appellant''s own evidence lends

considerable support to the evidence of the coolies, because it contains the passage ""imports and exports on the day of accident."" It would thus

appear that not only was the usual occupation of the deceased the lifting and removal of bags, but that on the day of the occurrence, such lifting

and removal had actually taken place. The only other fact required in order to bring the deceased within the definition is the number of persons

engaged at the place on any one day of the preceding twelve months. On that question, the evidence on the side of the applicant was that sixteen

or seventeen persons worked in each of the two godowns of the appellant. Not a word was asked of the witnesses in cross-examination with

regard to this statement made by them.

17. On the facts 1 have briefly outlined, I have no hesitation in holding that the deceased, Choudhury Ram, was employed in the handling of goods

at the shop of the appellant where his merchandise was stored, that more than ersons had been employed at that place within the preceding twelve

months and that on the day and at the time of the occurrence, the deceased was actually engaged in feeding the weighing scales, if I may use that

expression, by dragging bags of oilcake from where they lay stacked. There can thus be no doubt that the deceased was a workman within the

meaning of sub-clause (a) of clause (xxvi) of Schedule II to the Act.

18. The Commissioner has found that Ghoudhury Ram also came under subclause (b) of clause (xxvi). I do not consider it necessary to examine

the position with regard to sub-clause (b), as in my view his inclusion in sub-clause (a) is clear. The second ground urged by the learned Advocate

for the appellant must, therefore fail.

19. The third question urged was that the death of the deceased had not been proved to have been the result of the accident. I am of opinion that it

is really not open to the appellant to urge that ground, in view of the state of the evidence. The witnesses for the applicant deposed that the

deceased been struck on the spine near the waist, that, he had been removed to hospital and that he died, without being discharged, of, as one

witness put it, ""a gangrenous ulcer on the waist."" It was never suggested to these witnesses, nor said by any of the witnesses called by the appellant

that besides the serious injury which sent Choudhury Ram to hospital, anything else had ever happened to him. The positive evidence is. as I have

stated, that he died of the effect of the injury and again there was not the slightest cross examination of that evidence. If a workman is felled by

heavy lags tumbling down on his spine, if he is removed immediately to a hospital, if the hospital authorities admit him as an indoor patient, if the

deceased does not improve sufficiently so as to justify his discharge and if he dies as a result of the injury turning gangrenous while under the most

competent treatment. I am entirely unable to see, particularly in the absence of any other suggestion, how it can be alleged or held that the death

had taken place otherwise than as a result of the accident. The third ground urged by the learned Advocate must, therefore, also fail.

20. The last ground concerned the quantum of the compensation. It was urged that although the Commissioner might have discarded the accounts

filed by the appellant, he at least believed the evidence of the coolie Sardar and that according to that evidence itself, the wages of the deceased

workman would be about Rs. 80 for two months of the year and a much lower amount for the remaining months. It was accordingly contended

that the Commissioner had been clearly wrong in (sic) his computation upon wages of Rs. 80 to Rs. 100 per month and that it he had taken the

figures disclosed by the evidence of the coolie sardar. whom he had himself believed, the average wages would be in the neighbourhood of Rs. 50

to Rs. 60.

21. This argument, to my mind, entirely misreads the judgment of (he Commissioner. He referred"" to the evidence of the coolie sardar, not for the

purpose of accepting it as a whole, but only for the purpose of showing that by that evidence the accounts of the appellant stood discredited. For

the basis of his computation, he does not appear to have relied upon the evidence of the coolie sardar, but what he did was to rely on the evidence

of the applicant''s witnesses. Those witnesses, as I have already stated, put the wages at Rs. 80--90--100 a month and. once again, there was not

the lightest cross-examination. If in that state of the evidence, the Commissioner proceeded on the figures given by the applicant''s witnesses, I am

unable to see how we, as an Appellate Court, can hold that he committed an error of law or any error at all. All the grounds urged by the appellant

accordingly fail. The appeal is, therefore, dismissed with costs--the hearing-fee being assessed at three gold mohurs.

S.R. Das Gupta, J.

I agree.