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(2004) 02 BOM CK 0106

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 218 of 2003

Swapnil Enterprises	APPELLANT
Vs	
Chandrakala Kawale and Others	RESPONDENT

Date of Decision: Feb. 6, 2004

Acts Referred:

- Workmens Compensation Act, 1923 - Section 30, 4A(3), 6

Citation: (2005) ACJ 404 : (2004) 102 FLR 603 : (2004) 3 MhLj 324

Hon'ble Judges: S.T. Kharche, J

Bench: Single Bench

Advocate: K.K. Pathak, for the Appellant; U.A. Patil, for respondent Nos. 1 to 4 and V.D. Sathe, for respondnent No. 5, for the Respondent

Final Decision: Dismissed

Judgement

S.T. Kharche, J.
Rule, made returnable forthwith by consent of the parties. Heard the learned counsel for the parties.

2. The respondent Nos. 1 to 4 are legal heirs of deceased Kashiram Kawale. He was employed by the petitioner as helper and he met with an accident and died on 23-9-1994, and therefore, the legal heirs instituted proceedings before the Commissioner claiming under the provisions of The Workmen"s Compensation Act, 1923 (for short, the Act). The parties adduced the evidence and the Commissioner decided the W.C.A. No. 29/96 on 19-10-2001 and directed the petitioner-employer as well as Insurance Company to pay the amount of compensation Rs. 1,70,604/- jointly and severally to the applicants with further direction to the employer to pay interest " 12% p.a. on the amount of compensation with effect from the date of accident till realisation and also to pay penalty to the extent of 15% of compensation amount. Being aggrieved by this order, the petitioner-employer had filed revision application before the Commissioner being

Miscellaneous application No. 1/2002 which came to be rejected on 7-8-2002. This order passed by the Commissioner rejecting review application is under challenge in this petition.

3. Ms. Pathak, the learned counsel for the petitioner contended that review application before the Commissioner is perfectly maintainable and the Commissioner did not consider the contentions of the employer that during the pendency of the proceedings, he had deposited Rs. 25,000/- on 8-4-1999. She further contended that as per the order dated 19-10-2001, the Insurance Company was directed to pay Rs. 1,70,604/- towards compensation and the employer to pay interest "12% p.a. on the amount of compensation and 15% penalty and these directions are contrary to the provisions of the Act and in such circumstances, the impugned order passed by the Commissioner is not sustainable in law. In support of this contention, she relied on the decision of Andhra Pradesh High Court in Mahendra Kumar v. Real Feb. Autonagar 1997 (1) CLR 79.

4. She further contended that issue has to be framed before imposing the penalty and that the insurer is also liable to pay the penalty which is imposed on the employer u/s 4A(3) of the Act. The Commissioner did not consider this aspect, and therefore, the impugned order is bad in law. In support of this submission, she relied on the decision of Orissa High Court in the case of Khirod Nayak v. Commissioner for Workmen"s Compensation and Ors., 1992 (1) CLR 103.

5. Ms. Joshi, the learned counsel for the respondent Nos. 1 to 4 contended that the revision application itself is not maintainable because there is no statutory provision in the Act by virtue of which the Commissioner could have exercised his powers of review. She contended that the Commissioner cannot exercise powers of review unless the statutes specifically confers such powers, and therefore, the review application was not maintainable. In support of this submission, she relied on the decision of Supreme Court in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, and also on the decision of Madhya Pradesh High Court in the case of Abdul Majid v. Union of India, 1987 (1) T.A.C. 63.

6. She further contended that the review application is not maintainable because there is specific provision in the Act which provides appeal u/s 30 of the Act but the petitioner instead of filing appeal filed the said review application.

7. Mr. Sathe, the learned counsel for the respondent No. 5 Insurance Company contended that Insurance Company is not liable to pay penalty imposed on the insurer by the Commissioner of Workmen"s compensation u/s 4-A(3) of the Act, and therefore, the liability is of the employer to pay the amount of penalty. In support of this submission, he relied on the decision of Hon"ble Supreme Court in the case of New India Assurance Co. Ltd. v. Shiv Singh and Anr. 2000 2 CLR 179.

8. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that the proceedings claiming compensation on account of the death of the employee were decided on merits by the Commissioner by the order dated 19-10-2001 and the Commissioner had recorded the evidence adduced by the parties and on considering the evidence, he directed the employer and Insurance Company to pay the amount of compensation Rs. 1,70,604/- jointly and severally to the legal heirs of the deceased Kashiram Kawale. The Commissioner also directed the employer to pay interest " 12% p.a. on the amount of compensation with effect from the date of accident till realisation and also directed to pay penalty to the extent of 15% of compensation amount. The employer petitioner, being aggrieved by this order had filed review application which was registered as Case No. W.C.A. 29/1996.

9. At this stage, it is necessary to reproduce Section 30 of the Act which contemplates as under:

"(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for lump sum;
(aa) an order awarding interest or penalty u/s 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions; ....."

10. Bare reading of the aforesaid provisions, it would reveal that the appeal lies to the High Court from the orders passed by the Commissioner regarding grant of compensation as well as interest and penalty. It is also the fact that there is no specific provision in the Act to confer the power of review on the Commissioner. The power of revision conferred on the Commissioner by the provisions of the Act is u/s 6 which is in relation to the half-monthly payment payable under the Act either under an agreement between the parties or under the order of a Commissioner. Section 6 of the Act reads as under :

(1) Any half monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner, on the application either of the employer or of the workman accompanied by the

certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

11. Careful reading of the aforesaid provisions of the Act, it would reveal that the order dated 19-10-2001 was an appealable order, but the employer did not prefer any appeal against the said order and instead had filed the review application.

12. In Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , it has been observed by the Supreme Court that there is no provision in the Act from which the power of the State Government to review its order u/s 63 can be gathered. It is obvious that the Commissioners functioning as delegates of its functions u/s 63 cannot review its order.

13. The Madhya Pradesh High Court in the case of Abdul Majid v. Union of India, 1987 (1) TAC 63 held that the powers of review could not readily be inferred as inherent in any court unless the statutes specifically confer such powers and Commissioner appointed under the Workmen''s Compensation Act, does not enjoin power of review.

14. In view of the observations mentioned above coupled with the provisions of Sections 6 and 30 of the Act, it would clearly reveal that review application itself was not maintainable before the Commissioner. The contention of the learned counsel for the petitioner that review application was maintainable in view of the decision of Andhra Pradesh High Court in the case of Mahendra Kumar v. Real Feb. Autonagar, 1997 1 CLR 79 cannot be accepted because the said decision has no bearing on the facts and circumstances of the present case. Thus, this Court is of the considered opinion that the review application before the Commissioner was not maintainable and the impugned order passed by him is without jurisdiction. The fact remains that the employer did not prefer any appeal against the order passed by the Commissioner on 19-10-2001, and therefore, no case has been made out for interference by this Court into the said order dated 19-10-2001.

15. The next submission of the learned counsel for the petitioner is that the Insurance Company is also liable to pay the interest and penalty is also liable to be rejected in view of the decision of the Supreme Court in the case of New India Assurance Co. Ltd. v. Shiv Singh and Anr., 2000 2 CLR 179 wherein it has been "observed that the Insurance Company is not liable to pay penalty imposed on the insured employer by the Commissioner of Workmen''s Compensation u/s 4-A(3) of the Act.

16. Since the employer did not prefer any appeal against the order dated 19-10-2001 passed by the Commissioner, it cannot be said that the Commissioner has committed any error of law while directing the employer to pay interest and penalty. The employer in spite of having full opportunity to raise this issue before the Commissioner in the proceedings, had chosen not to raise the specific issue before the Commissioner and therefore, the employer cannot be allowed to agitate this issue in this petition.

17. The legal heirs of the deceased had filed an application before the Commissioner u/s 8 of the Act for distribution of the amount of Rs. 25,000/- amongst respondent Nos. 1 to 4. The review application filed by the employer was rejected on 7-8-2002 and the respondents legal heirs have filed an application for recovery u/s 31 of the Act which was numbered as Recovery Proceeding No. 54/2002 in which the details of computation of the amount due were furnished which is inclusive of the interest and penalty. However, the amount of Rs. 25,000/- has already been deducted from the amount which was claimed in the recovery proceedings. It is not disputed that the Insurance Company has deposited the amount of Rs. 1,70,604/- which has been disbursed to all the legal heirs of the deceased by the Commissioner. In such circumstances, this Court is of the considered opinion that this petition is not maintainable and stands dismissed. Rule discharged.