

Mohanlal Prabhuram Vs Fine Knitting Mills Co. Ltd.

Court: Bombay High Court

Date of Decision: Oct. 14, 1959

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115
Workmens Compensation Act, 1923 â€” Section 3

Citation: AIR 1960 Bom 387 : (1960) 62 BOMLR 195 : (1960) 1 FLR 156 : (1960) 1 LLJ 439

Hon'ble Judges: Naik, J

Bench: Single Bench

Advocate: M.A. Rane, for the Appellant; Vithalbhai B. Patel, for the Respondent

Judgement

(1) This purports to be an application in revision u/s 115 of the C. P. C. from the order of the Ex-officio Commissioner for Workman"s

Compensation, Ahmedabad the material facts may be briefly stated as follows:

One Deoshankar and another Mohanlal were working in the Fine Knitting Mills Company Ltd., at Ahmedabad. On 29-7-1955, they made

applications before the Commissioner under the Workmen"s Compensation Act, stating that they received personal injuries by accident arising out

of and in the course of the employment. They stated known persons who were instigated by one Meghasing on behalf of the company. The

applicant Deoshankar had a fracture on his hand. The applicants were removed to the Civil Hospital. Deoshankar had a swelling on his right ankle,

and Mohanlal had a fracture on his hand. The applicants were removed to the Civil Hospital. Deoshankar was discharge on 4-8-1955, and

Mohanlal was discharged on 24-10-1955. The monthly wages of Deoshankar amounted to Rs. 110/- and those of Mohanlal amounted to Rs.

120/-. Mohanlal claimed Rs. 176/-. It is not necessary to state the claim made by Deoshankar because he has not come up in revision. The Mill

opposed the applications and contended that he applicants did not receive injuries by accident arising out of or in the course of this quarrel that

they received the injuries. The Commissioner, believing the evidence of one Shivprased, who was examined for the Mill, held that the applicants

had failed to prove that they received injuries by accident arising out of and in the course of their employment. From that decision, Mohanlal alone

has come up in revision.

(2) Mr. Patel for the opponent raised a preliminary objection contending that the revision application was not competent. In this connection, he

relied upon a decision of this Court reported in *Spring Mills Ltd. v. G. D. Ambedkar*, 51 Bom LR 148 : AIR 1949 Bom 188. This decision related

to the question as to whether an application in revision would lie from the decision given by the authority appointed under the Payment of Wages

Act, 1936. In the course of their judgment, however. Their Lordships, relying upon an unreported decision of the Division Bench in *Trustees of the*

Port of Bombay v. Bhima Raoji, (Civil Revn. Appln. No. 255 of 1926 Bom), observed at p. 152 of Bom LR: (at p. 191 of AIR) as follows:

That was a decision given so long ago as January 11, 1927, by Mr. Justice Fawcett and Mr. Justice Patkar. In a short judgment they stated:

We think it is clear that the Commissioner under the Workman's Compensation Act, VIII of 1923, is not a Court within the meaning of S. 115,

C.P.C. Sir. Thomas Strangman for the applicant has frankly conceded that this is so, and has drawn our attention to the provisions which supports

that proposition. In particular those of sub-section (2) of S. 19 and Ss. 23 and 27 seem to me practically conclusive on the point.

In order to appreciate this objection, it is necessary, first of all, to refer to some of the provisions of the Workmen's Compensation Act, Section 20

the Workmen's Compensation Act gives authority to the State Government to appoint a Commission for workmen's compensation for such local

area as may be specified in the notification. The powers of the Commissioner have been specified in section 22. Section 23 in substance provides

that the Commissioner shall have all the powers of a Civil Court under the CPC for the purpose of taking evidence on oath (which such

Commissioner is empowered to impose) and of enforcing attendance of witnesses and compelling the production of documents and material

objects. (and the Commissioner shall be deemed to be a Civil Court for all purposes such as section 195 and of Ch. XXXV of the Cr. P. C.,

1898). Section 30 provides for appeals and lays down that an appeal shall lie to the High Court from the decisions enumerated at clauses (a) to

(e). The first proviso, in effect lays down that no appeal shall lie against any order unless the amount in dispute in the appeal is not less than three

hundred rupees. The only other section to which reference need be made is section 27, which lays down that the Commissioner may, if he thinks

fit, submit any question of law for the decision of the High Court, and if he does so, shall decide the question in conformity with such decisions. The

question as to whether a Commissioner appointed under the Workman's Compensation Act is a Court or a persona designata was decided by the

Full Bench of the Patna High Court in *Mt. Dirji Vs. Smt. Goalin*, . In that case. Their Lordships pointed out that:

there is no necessary antithesis between the expressions "persona designata" and "Court"; in other words, even a persona designata may be a

Court. Whether he is a Court or not depends upon his powers and the functions which he has to discharge.

Their Lordships referred to the provisions of Ss. 23, 27 and also 30 of the Workmen's Compensation Act, which have been set out above and

came to the conclusion that a Commissioner appointed under the Workmen's Compensation Act is a Court. After the decision of the Full Bench

of the same Court for the decision of the question as to whether the Commissioner, who according to the Full Bench decision is a Court can be

regarded as a Court subordinate to the High Court. That decision is reported in *Mt. Dirji Vs. Smt. Goalin*, . Relying on a decision of the Bombay

High Court in *Balakrishna Daji v. Collector*, Bombay Suburban ILR 47 Bom 699 : AIR 1923 Bom 290. Their Lordships held that a Court is

subordinate to the High Court if appeals from the decisions of that Court are made to lie to the High Court. Applying this criterion. Their Lordships

took the view that a Commissioner under the Workmen's Compensation Act is a Court subordinate to the High Court and as such his decisions

are liable to be revised u/s 115 of the C. P. C. The Assam High Court in *Abdul Rasid v. Hanuman Oil and Rice Mill*. AIR 1951 GUA 88, has

followed the decision of the Patna High Court in *Firm G. D. Gianchand v. Abdul Hamid*, AIR 1938 Lah 855. It will thus be seen that the

preponderance of authority is in favour of the view that the Commissioner is a Court and a Court subordinate to the High Court. The test laid

down in ILR 47 Bom 699 : AIR 1923 Bom 290, in considering the question as to whether a revision application lies, is that unless the High Court

has appellate jurisdiction over a Court, that Court will not be subordinate to the High Court. In view of the provisions of Section 90, under which

appeals in certain cases are made to lie to the High Court, it is clear that the High Court exercises appellate jurisdiction over the Commissioner

appointed under the Workmen's Compensation Act. As against this, Mr. Patel sought to rely to certain observations contained in 51 Bom LR

148: AIR 1949 Bom 188, which have been set out above. The actual decision in the case related to the question as to whether the authority

appointed under the Payment of Wages Act, 1936, was a Court of civil jurisdiction within the meaning of section 115 of the C. P. C. and Their

Lordships held that the authority under that Act provisions of the Workmen's Compensation Act, and also referred to the decision of the Patna

High Court cited above, and pointed out that the decision of the Patna High Court stood in conflict with the decision of the Division Bench in Civil

Revn. Appln. No. 255 of 1926 (Bom). It is however, interesting to note that in the unreported case, interesting to note that in the unreported case.

Sir Thomas Strangman for the applicant conceded that the Commissioner under the Workmen's Compensation Act is not a Court within the

meaning of section 115 of the Code of Civil Procedure. It is thus evident that the decision based on the concession made by the learned advocate

for the applicant. The question does not appear to have been fully discussed and thrashed out. It is, also interesting to note the observations made

by their Lordships at p. 153 of Bom LR: (at p. 191-192 of AIR) in *Spring Mills Ltd. v. G. D. Ambedkar* to the effect that it was not safe to apply

the decisions with respect to the Workmen's Compensation Act to the construction of a statute like the Payment of Wages Act. Their Lordships

also pointed out that the Workmen's Compensation Act created new rights and established special tribunals; that was not the case under the

Payment of Wages Act. They also pointed out that the Workmen's Compensation Act provides an appeal to the High Court in certain cases, while

there is no such appeal provided under the Commissioner in submitting a case to the High Court. It is on these grounds that they observed that

what applies to the Commissioner under the Workmen's Compensation Act would not necessarily apply to the authority under the Payment of

Wages Act. It is thus evident that, that in the first place, the decision in 51 Bom LR 148 : AIR 1949 Bom 188 is not directly on the point, and in

the second place, the observations contained in p. 152 of Bom LR: (at p. 191 of AIR) thereof, on which strong reliance has been placed by Mr.

Patel, are based on a judgment in which the position was conceded by the counsel. Finally the authority of that decision in so far as it is sought to

be applied to the case of a Commissioner under the Workmen's Compensation Act is weakened by the observations contained at p. 153 of Bom

LR: (at pp. 191-192 of AIR) referred to above. In this view of the case, following the decisions of the Patna and Assam High Courts. I hold that

the Commissioner under the Workmen's Compensation Act is a Court subordinate to the High Court. Consequently, a revision application lies to

the High Court from the order of the Commissioner.

(3) Turning to the merits of the claim, on behalf of the two applicants. Deoshankar was the only witness who was examined. He stated that he and

Mohanlal were assaulted by Meghasing, operating in the Dyeing Department of the Opponent Mills and three unknown persons when they were

working in the Press building Department. He further stated that the assault was sudden and unprovoked. This evidence was disbelieved by the

Commissioner on the ground that Shivprasad the reling clerk of the Mills, stated that the workers of the Dyeing Department had brought yarn to

the building department and the applicants objected to it, and therefore, a quarrel ensued. I have been shown a certified copy of the statement

made by Shivprasad, and I find that nowhere in his deposition he has made the kind of statement which has been attributed to him by the

Commissioner in his order. On the other hand, he stated: "After the incident, I learnt that a quarrel had taken place between the applicants on the

one hand and Megasing and others on the other hand." In his cross-examination, he stated: "I went there when the quarrel was going on." Thus, it is

clear that Shivprasad had no personal knowledge and whatever he stated about the quarrel was based on hear-say. It may be that he went to the

place when the quarrel was in progress. In any case, it is clear from the statement that he was not present at the time when the quarrel commenced.

He is not, therefore, in a position to say as to how the quarrel started and by whom. Deoshankar has emphatically asserted that it was arising

and three other persons, who accompanied him assaulted him. It is, therefore, clear that the finding of the Commissioner is not only without

evidence, but is opposed to the evidence led in this case. That finding, therefore, will have to be upset.

(4) Then Mr. Patel contended that even if the evidence of Deoshankar is accepted in full, still, it does not disclose that the injuries were caused to

the petitioner as a result of an accident which occurred to him in the course of his employment. For this purpose, Mr. Patel sought reliance upon

certain observations made by the learned Chief Justice Chagla in *Bhagubai Vs. General Manager, Central Railway, V.T., Bombay*. These

observations are to the following effect.

Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident

arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The

authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place he has to face a peril and

which he has to face, that a causal connection is established between the accident and the employment. It is now well settled that the fact that the

employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be

something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril which he

faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other

member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident.

If the evidence of Deoshankar is accepted, then, it is clear that the petitioner did not contribute by his own action or conduct to the peril. It is

equally clear that the petitioner was a helpless victim of the assault which was initiated by one of the employees of the Mill, who was assisted by

three outsiders. It is also clear that the attack took place upon the petitioner while he was engaged in carrying out his day to day duties. That being

the case, it must be held that the injuries suffered by the petitioner was incidental to his employment. There was also causal connection between the

accident and the employment, and, therefore, accident must be taken to have arisen out of employment of the petitioner. It is significant to note that

the facts which the Division Bench was considering (in which the decision was given by the learned Chief Justice) were somewhat stronger than the

facts of this case. These facts were: The deceased was an employee of the Central Railway at a station on the Railway, living in the railway

quarters adjoining the railway station. The only access to the deceased from the quarters to the station was through the compound of the railway

station. One night the deceased left his quarters a few minutes before midnight in order to join duty, and immediately thereafter he was stabbed to

death by some unknown person. It is noteworthy that the attack on the deceased in that case took place outside the premises of the railway. Yet it

was held by the learned Chief Justice that this was an accident which occurred in the course of the employment.

(5) The result is that the application must succeed. The petitioner had claimed Rs. 176/1 by way of damages, and it does not appear that this

amount was contested on behalf of the Mills. The application is therefore allowed. Rule is made absolute. The petitioner is awarded Rs. 176/-. The

petitioner to recover costs of this petition.

FD/V.S.B.

(6) Revision allowed