

CASE NO.:
Appeal (civil) 2943 of 2008

PETITIONER:
Om Parkash Batish

RESPONDENT:
Ranjit @ Ranbir Kaur and others

DATE OF JUDGMENT: 24/04/2008

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2943 OF 2008
(Arising out of SLP (C) No. 5471 of 2006)

S.B. SINHA, J.

1. Leave granted.

2. Whether a casual employee who was appointed for a limited period to carry out repairing job in a building would be a 'workman' within the meaning of the provisions of Section 2(n) of the Workmen Compensation Act, 1923 (the Act) is the core question involved herein.

3. Appellant is the owner of a residential building. It is situated by the side of an industrial establishment known as M/s. Chandrika Textiles.

4. On or about 30th June, 1996, the predecessor-in-interest of the respondents, Ram Lal, suffered an accident coming in contact with a high tension electrical wire passing over the roof of the said M/s. Chandrika Textiles. He suffered injuries as a result thereof. He was shifted to the Post Graduate Institute of Medical Research, Chandigarh, where his statement was recorded. He expired on 6th July, 1996.

5. On the premise that the said Ram Lal was a 'workman' under the appellant, a proceeding was initiated by the Workmen Compensation Commissioner under the Act. In the said proceeding the parties adduced their respective evidences. One of the contentions raised by the appellant was that the accident took place when the said Ram Lal was on the roof of the said textile mills and that he had not been working under him. It was, however, accepted that he had been working for sometime with the appellant for carrying out repair works. It was furthermore urged that a casual employee would not be a 'workman' within the meaning of the provisions of the said Act.

6. The Workmen Compensation Commissioner framed several issues; principal amongst them were :-

"1. Whether the deceased Ram Lal was employed as workman by the opposite party in the relevant date? OPA

4. Whether the application is not maintainable? OPR

The first issue was answered in the negative. The Workmen Compensation Commissioner on issue No.4 held :-

" In the nutshell nothing can be derived from the statement of PW-3 Kamal Chand except that he knew the date of accident i.e. 30-6-1996 at the time which assumably seems to have been after thought only. Therefore both the witnesses of the applicants could not prove the alleged place of accident which resulted into the death of Ram Lal whereas there is sufficient evidence having been admitted by Achharpal PW about the site of the accident further having corroboration in the statement of Hamir Chand and Anil Kumar Rws who are independent witnesses.

Thus the entire evidence of respondents is logical which goes to show that Ram Lal got shock injuries on the roof of the shed of a closed factory owned by late Partap Singh at village Khera on 30-6-1996 as per site plan Ex.RW-3/A.

Secondly the contention of respondents that deceased Ram Lal was not covered under the definition of a workman is not required to be discussed here as the relationship of employee and worker is not there in this particular case.

In view of the above discussion I hereby hold that the application is not maintainable as Ram Lal deceased was not workman on the relevant date i.e. 30-6-1996 with the respondents and he got inflicted by an electric shock at another place than the alleged one.

Therefore issue No.4 is decided in favour of the respondents and against the applicants."

7. Respondents herein preferred an appeal thereagainst before the High Court in terms of Section 30 of the said Act. The High Court framed the following substantial questions of law.

"1. Whether the Commissioner has totally failed to appreciate the evidence properly and legally and as such has caused injustice to the appellants?

2. Whether the Commissioner has wrongly mixed the question of criminal proceedings as well as the proceedings under the Workmen Compensation Act and has given wrong weightage to the police report?

3. Whether the learned Commissioner has wrongly and illegally decided issue No.4 regarding maintainability of the application?

8. The High Court proceeded on the basis that although an appeal under Section 30 of the Act lies only on a substantial questions of law, however, total misreading and misappreciation of evidence would also give rise to the one. It meticulously went into the deposition of the witnesses examined on behalf of both the parties. It, for the reasons stated in the impugned judgment, did not accept the statement made by the deceased which was treated to be the dying declaration on his part.

9. While holding that there was nothing to disbelieve the statement of the widow with regard to the nature of the injuries suffered by Ram Lal in the accident, the deposition of the witnesses examined on behalf of the appellant herein was disbelieved holding :-

" Keeping in view the entire evidence and the aforesaid discussion I am of the considered view that deceased Ram Lal was employed with O.P. Batish and the accident occurred in the premises of O.P. Batish."

A sum of Rs.1,66,369.50 ps. was awarded in favour of the respondents. Appellant was also held liable to pay penalty of 50% of the said amount i.e. Rs.83,184.75 ps.

10. Mr. Jawahar Lal Gupta, learned senior counsel appearing on behalf of the appellant would submit that there being no relationship of employer \026 employee by and between the appellant and the deceased Ram Lal, the impugned judgment is wholly unsustainable.

11. Mr. Yash Pal Dingra, learned counsel appearing on behalf of the respondents, on the other hand, would contend that the definition of 'workman' as contained in Section 2(n) of the Act must be read with the Schedule II appended thereto. It was submitted that only because Ram Lal was a daily wagger, the same would not mean that he was also a casual workman.

12. The Workmen Compensation Commissioner arrived at a finding of fact that the accident did not take place at the premises of the appellant. It was on the said premise that the Workmen Compensation Commissioner did not deem it fit to go into the question as to whether late Ram Lal was a workman or not.

13. Section 30 of the Act provides that an appeal shall lie to the High Court on a substantial question of law. A substantial question of law, in our opinion, will carry the same meaning as is commonly understood. Distinction sought to be made by Mr. Dhingra that a substantial question of law for the purpose of a first appeal and one for a second appeal would be different, cannot be accepted.

14. The right to file an appeal is a statutory right. The Parliament may not provide such a right at all. The right to file an appeal can be hedged with conditions. A limited right can also be conferred.

15. A right of appeal under the Act is provided, both to the management as also the workman. It is difficult to hold that whereas for the workman the High Court shall exercise a wider jurisdiction but in the event the employer is the appellant, its jurisdiction would be limited. The High Court unfortunately proceeded on the basis that appreciation of evidence also would give rise to a substantial question of law.

16. In a proceeding initiated under the Act the provisions of the Code of Civil Procedure or of the Evidence Act are not applicable. The Commissioner could lay down his own procedures. He could, for the purpose of arriving at the truth, rely upon such documents which were produced before it.

17. The incident was reported to the police authorities. The Officer Incharge of the concerned police station recorded the statement of deceased Ram Lal. The said statement was marked as Ex.RW-5/A, the translated version whereof reads as under :-

"Stated that I am a resident of aforesaid address and have passed matric. I was working in Khera Chak in the house of O.P. (Om Parkash) as beldar (daily wagger) for about 8 days. On 30.6.1996 I had gone to Mama's (maternal Uncle's) house at Khera. At about 8.30 in the morning I climbed on to the roof of the factory which is adjacent to the house of my maternal uncle just to watch the weather

and while away my time, I did not pay attention to the high tension wire going above the roof. Suddenly by mistake my hand touched the electric wire and thereafter I do not know what happened. This accident occurred due to my being electrocuted suddenly. I do not have any suspicion on any person. I do not want to start any police investigation."

18. The entire approach of the High Court, with respect, as regards the correctness or otherwise of the said statement is wrong. The statement was recorded by the police authorities. If that be so, it could be looked into by the Workmen Compensation Commissioner. The High Court opined that the Commissioner had mixed up the proceeding before it with the criminal proceedings. He did not.

19. If the statement of the deceased was admissible in evidence, evidently no case has been made out for initiating any proceeding under the Act against the appellant. It was a case of pure and simple accident and that too at a place over which the appellant had no control. Entering into the realm of appreciation of evidence adduced by the parties per se is out of bound of an appellate court which is concerned with determination of a substantial question of law. It is one thing to say that the findings of the Workmen Compensation Commissioner were perverse and in arriving at its findings it failed to take into consideration relevant facts or took into consideration irrelevant factors which were not germane for the purpose of determining the issue, but whether a witness is trustworthy or not, has nothing to do with determining into the question of perversity.

20. We may consider the case from another angle. The averments contained in the claim application are as under :-

" That the deceased Ram Lal S/o. Sh. Ram Rattan R/o. Village Palasra, Tehsil Nalagarh, Distt. Solan, H.P. was employed as workman for construction work of residential building of opposite party in the month of June, 1996. The deceased Ram Lal had worked with the opposite party for 27 days continuously as workman for the repair work of shed at village Khera, Tehsil Nalagarh, Distt. Solan, H.P."

21. The definition of 'workman' as provided in Section 2(n) of the Act, as it stood on the date of the incident, reads as under :-

"(n) "workman" means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or business who is--

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(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

The ingredients of the said provisions are \026

- i) the workman must not be employed as a casual workman ;
- ii) his employment must be in connection with the employer's trade and business.

22. We must, however, place on record that the words beginning from "other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business" have been omitted by Act 46 of 2000. We are, however, considering the statutory provision as it then stood.

23. The workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provisions of the Act.

24. Schedule II appended to the said Act to which reference was made by Mr. Dhingra, in our opinion, is not applicable, as it is subject to the provisions of Section 2(1)(n) of the Act. If, therefore, the law as it then stood would exclude the applicability of the Act, having regard to the definition of the term "workman" the same cannot be held to include deceased, only because he was working in connection with a building activity.

Even otherwise, working in a residential house does not satisfy the requirements of law.

25. We must also bear in mind that the very fact that the Act was amended is itself a pointer to show that the Parliament intended to avoid a mischief which was prevailing.

Applying the principles of mischief rule [Heydon's case (1584) 3 Co. Rep. 7a], it must be held that prior to the amendment of the definition of "workman", the category of workman to which Ram Lal belonged did not come within the purview of the provisions of the said Act.

26. For the reasons abovementioned the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed with no order as to cost. However, the amount paid to the respondents by the appellant, if any, shall not be recovered.