

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8278 OF 2013
[Arising out of S.L.P.(C)No.26414 of 2011]

Dredging Corporation of India Ltd.Appellant

Versus

P.K. BhattacharjeeRespondent

WITH
CIVIL APPEAL NO. 8279 OF 2013
[Arising out of S.L.P.(C)No.13296 of 2012]

J U D G M E N T

VIKRAMAJIT SEN, J.

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1. Leave granted. We have heard learned counsel for the parties in detail.

The Commissioner, Workmen's Compensation (1st Court), West Bengal held on 24.6.2010 that the Applicant/Respondent had met with an accident on 27.12.1999 while in the employment of the Appellant and that considering his age, wages and injury he was entitled to compensation computed at Rs.12,00,000/- (Rupees Twelve Lac) which is the maximum awardable, together with simple interest at the rate of

twelve per cent per annum till the date of realization. The Appellant thereafter approached the High Court of Calcutta but without success as the Division Bench, by its judgment dated 12.8.2011, has dismissed the Appeal. It held that the Respondent, at the concerned time, was on duty on Board on one of the Appellant's vessels and that "this would mean that he was on duty, any affliction or injury during such time would come within the ambit of Section 3 of the Employee's Compensation Act, 1923 (the erstwhile Workmen's Compensation Act, 1923, till its amendment by Act 45 of 2009)." It is evident that the Respondent-employee has succeeded concurrently both on facts as well as on law.

2. Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the Appellant has laid emphasis on the fact that the Respondent/Claimant was diagnosed immediately after 27.12.1999 to be suffering an ischemic heart ailment, rendering it legally impermissible for the Appellant-company to continue any further with his services. His argument is that this health malady has not arisen as a consequence of the Respondent's services with the Appellant, and hence no compensation was payable under Section 3 of the Employee's Compensation Act, 1923 which comes into operation only in the event of an employee suffering personal injury caused by an accident arising

out of and in the course of his employment. The contention on behalf of the Appellant-company is that an ischemic heart condition is personal to the constitution of the Respondent, totally unrelated to his service. Although ordinarily we would be loathe to peruse the evidence led by the parties especially encountering concurrent conclusions, we have done so in the present case. The Employee's Compensation Act is intended for the benefit of an employee, and quintessentially is a no-fault liability. It appears to us that both the Courts below have misdirected themselves in law in that because the illness of the employee was discovered while he was in actual service it has led them to the conclusion that compensation is payable under Section 3 of the Employee's Compensation Act, 1923. We are also mindful of the fact that the Commissioner, being the Court of first instance, has held that he met with an accident on 27.12.1999, and that he suffered 100% loss of earning capacity as he was permanently unfit for sea-service. It ought to have distinguished between the discovery of the health condition while in service and the health condition having occurred during service. So far as the arguments of the Company are concerned, especially in the Appeals filed assailing the decision of the Commissioner, the emphasis has been that the ischemic heart condition of the employee discovered while he was actually serving with the

Appellant, was not related to his service. The learned Commissioner ought to have satisfied himself fully on this aspect of the case rather than come to a conclusion that an accident had occurred, for which the evidence is extremely scanty. Faced with this predicament, Mr. Rana Mukherjee, learned counsel appearing for the employee has endeavoured to establish that an ischemic heart condition can result from job stress which was continuously encountered by the employee.

3. For these reasons, it appears to us to be expedient and just to set aside the impugned order as well as the order of the Commissioner and remand the matter back to the Court of the Commissioner for fresh adjudication *de novo*. It would then be advisable that a specific issue be struck as to whether the employee's ischemic heart condition developed as a consequence of any stress or strain of his employment with the Appellant-company. There can be no gainsaying that the Employee's Compensation Act, 1923 is a beneficial legislation requiring some play at the joints so far as considering a disabled employee's claim is concerned. In these circumstances, parties shall appear before the Commissioner, Workmen's Compensation (1st Court) West Bengal or its successor Court, as the case may be, on 11.11.2013.
4. The Appeal stands allowed accordingly. It is, however, made clear that anything expressed hereinabove shall not be deemed to have an

expression of opinion on the merits of the case.

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5. A perusal of the impugned order makes it palpably clear that the Appellant-company's Appeal was dismissed following the decision in FMAT No.1327 of 2010 (Dredging Corporation of India Ltd. v. P.K. Bhattacharjee). In these circumstances, this matter also requires to be remanded to the High Court of Calcutta for a fresh hearing in F.M.A. No.869 of 2010. Parties to appear before the High Court on 18.11.2013.

6. The Appeal stands allowed accordingly.

.....J

[T.S. THAKUR]

New Delhi

.....J.

September 17, 2013.

[VIKRAMAJIT SEN]