

GAHC010143312019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/89/2019

ASSAM ALUMINUM
REP. BY ONE OF THE AUTHORIZED PARTNER SRI ANKIT AGARWAL, AGED
ABOUT 34 YEARS, S/O- SRI DEBI PRASAD AGARWAL, SILA, CHANGSARI,
CHOWKIGATE, P.O. CHANGSARI, DIST- KAMRUP (R), PIN- 781101, DIST-
KAMRUP, ASSAM

VERSUS

THE COMMISSIONER, EMPLOYEES COMPENSATION CLAIMS TRIBUNAL
AND ANR.
DHUBRI, P.O. DHUBRI, PIN- 783301, ASSAM

2:ARATI RAY
W/O- LT DHANESH RAY @ DHANESHWAR RAY
R/O- PACHIM KANURI PT-I
P.O. LAKHIMARI
P.S. GOLAKGANJ
DIST- DHUBRI
ASSA

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : MR. S. CHAKRABORTY(R-2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. S Chamaria, Advocate

For the Respondents : Ms. S Chakraborty, Advocate

Date of Hearing : 01.03.2023

Date of Judgement :01.03.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. S Chamaria, learned counsel for the petitioner. Also heard Mr. S Chakraborty, learned amicus curiae for the respondents.

2. The present petition has been filed challenging the proceeding initiated by the learned Commissioner, Employees Compensation Claims Tribunal, Dhubri in E.C. case No. 02/2019 by issuing on notice dated 09.05.2017. By the said notice, the petitioner/ proprietor of the petitioner has been asked to show cause as to why the amount claimed by the respondent as compensation for the death caused to employed husband of the petitioner shall not be paid.
3. Though notices were issued in the present prosecution, however, the claimant i.e. the wife of the deceased has not appeared before this court. In that view of the matter, this court requested Mr. S Chakraborty, learned counsel to assist the court, who has readily accepted such request. Accordingly, Mr. Chakraborty has advanced his argument on behalf of the said respondent.
4. The background fact as discernible from the annexure 8, which is the petition filed for compensation under the provision of Employees Compensation Act, 1923 by the respondent No. 2 are as follows:
 - (I) The respondent No. 2 is the widow of deceased Dhanesh Ray @

Dhaneshwar Ray, who was an employee under the present petitioner.

- (II) According to the claimant on 05.12.2016 at about 2 p.m. while her husband was on duty and was working at the industry he met with an accident due to the burst of buffer of the engine and sustained multiple grievous injuries including head injury, on his person. Though, her husband was immediately admitted at Narayana Bafna Hospital, Amingaon, however, later on he succumbed to his injury on 06.12.2016.
- (III) Thereafter, according to the claimant, she requested the petitioner through Advocate's notice to pay a compensation of Rs. 15 Lakhs under Section 10 of the Employees Compensation Act, 1923.
- (IV) It is her further case that though a reply was made by admitting the accident, however, it was replied that already Rs. 1 Lakh has been paid to the claimant being the wife of the deceased.
- (V). She further contends that the employer of her husband is still liable to pay compensation to the petitioner within one month from the date of accident in terms of the provisions of Employees Compensation Act, 1923 and in default liable to pay penalty and interest. Accordingly, a claim of Rs. 15 Lakhs was made.

5. On receipt of such claim, E.C. Case No. 02/2019 was registered and notice was issued on 09.05.2019 asking the present petitioner to appear before the learned Commissioner on 28.06.2019 and to show cause/ file objection. Without filing such objection, the present petitioner has straightway approached this court by taking the plea that there is a legal

embargo under Section 53 of the Employees State Insurance Act, 1948 and it is the case that in the reply of the legal notice, said embargo was specifically made known to the respondents.

6. Reiterating the same, Mr. Chamaria submits:

- (I) That under Section 53 of the Employees State Insurance Act, 1948, there is a bar of payment of compensation, when a person is insured under Employees State Insurance Act, 1948. Therefore, Mr. Chamaria contends that as the husband of the claimant was receiving benefit under the Employees State Insurance Act, 1948 at the hands of the petitioner, therefore, the embargo under Section 53 will come and the learned Commissioner shall have no jurisdiction to entertain such plea.
- (II). The further contention of Mr. Chamaria is that the claim filed by the respondent No. 2 is barred under Section 10 of the Employees Compensation Act, 1923 as the claim has been filed beyond the period as prescribed under Section 10 of the Employees Compensation Act, 1923.
- (III). The further pleaded case and contention of Mr. Chamaria is that the petitioner has already settled the claim of compensation through an agreement, which is annexed at annexure 1 to the petition and in term of the said agreement, the claimant has already accepted Rs. 1 Lakh as full and final settlement against the compensation and has relinquished her all claims in respect of her deceased husband for all time. Therefore, Mr. Chamaria concludes that the entire proceeding initiated should be set aside.

7. Mr. Chakraborty while assisting this court submits that whether a claim is barred under Section 53 of the Employees State Insurance Act, 1948 is a mix question fact and law. To come into a conclusion that the claim in the present case is barred under the aforesaid provision of law, certain factual determinations are to be made such as, whether the employer establishment is covered under the Employees State Insurance Act, 1948 or not and further determination will be required, whether a person injured is insured person or not. Therefore, this present petition, which has been filed only on the issuance of notice should not be entertained inasmuch as the petitioner ought to have appeared before the learned Commissioner and replied their contention and then the learned Commissioner would have determined such issue.
8. Mr. Chakraborty further contends that the reliance of the petitioner on the amicable settlement (Annexure 1) is not only in permissible under Law but also such courses of actions are not to be entertained. In support of such contention, Mr. Chakraborty relies on a judgment of the Hon'ble Apex Court in ***Roshan Deen vs. Preeti Lal reported in (2002) 1 SCC 100.***
9. Mr. Chakraborty also submits that the question of limitation can also be determined by the learned Tribunal and the Tribunal is having power to condone such delay.
10. I have given anxious consideration to the argument advanced by the learned counsel for the parties. Before coming to the merit of such contention, this court is disturbed looking at the annexure 1 settlement deed or in a sense declaratory deed signed by the claimant / wife of the deceased, which reflects as follows:

“3. That it is evident that the death was caused due to the unforeseen reason and for this purpose the employer is no where responsible and as such I do not like to make any kind of claim before any concerned authority. Further, I also do not like to pursue any civil/ criminal case on the employer Sri Ankit Agarwal.

4. That as a matter of full and final settlement by acknowledging a sum of Rs. 1,00,000/- (Rupees one lakh) from the aforesaid employer, I relinquish my all claims in respect of my deceased husband for all time. Further, I again reiterate that I will not raise any claim in future in any manner for the aforesaid purpose.”

11. From the aforesaid, it is seen that the wife of the deceased had in fact relinquished her rights, which is absolutely against law more particularly by virtue of the mandate of Section 17 of the Employees Compensation Act, 1923. Section 17 provides that any contract or agreement whether made before or after the commencement of the Act, 1923, whereby an employee relinquishes any right of compensation from employer for personal injury arising out of or in course of employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under the Act, 1923.
12. Therefore, reliance on such annexure 1 and pleading that after having negotiation, the matter has amicably been settled, is not permissible under the law. The Hon'ble Apex court in the case of ***Roshan Deen (supra)*** held that such course of action is not permissible inasmuch as this court in exercise of its power under Article 226 and 227 is to look into such violation and is to ascertain that justice prevails and not to threaten it. Therefore, the contention of Mr. Chamaria that there was an amicable settlement is rejected and such settlement cannot be taken note of by any authority except under established provision of law like Section 28 of the

Employees Compensation Act, 1923.

13. Coming to the point of jurisdiction, we are in total agreement with the argument advanced by Mr. Chakraborty that to determine whether the claim in the present case is barred under Section 53 of the Employees State Insurance Act, 1948 is a mix question of fact and law and certain determinations are required such as whether the organization is covered under Employees State Insurance Act, 1948 or the individual employee was insured under the provision of law.
14. Therefore, this court shall not entertain such question of fact in exercise of its power under Article 226 and 227 of the Constitution of India inasmuch as the learned Commissioner can very well determine whether it should proceed or it is having a jurisdiction when it is established that the application is barred under Section 53 of the Act, 1948. This court in exercise of its jurisdiction under Article 227 cannot do such fact finding determination.
15. Coming to the point of limitation, it is well established that the question of limitation is a mix question of fact and law inasmuch as proviso to Section 10 of Employees Compensation Act, 1923 clearly empowers the learned Commissioner to condone such delay, if the same is properly explained. Therefore, whether the claim is barred or whether it is case for exercise of power under proviso to Section 10 is a matter to be dealt with by the learned Commissioner not by this court.
16. Accordingly, the present petition stands dismissed. Looking at the conduct of the petitioner, who instead of approaching the learned Commissioner and placing its claim straightway by filing a petition under Article 227 of

the Constitution of India has come to this court and raised certain question of fact and based on such fact prayed before this court to determine the jurisdiction of the learned Commissioner inasmuch as in support of their cause in relying on the Annexure 1, which is not permissible under Law, this court is of the opinion that the present petition is nothing but abuse of the process of the court and therefore, a cost of Rs. 25,000/-, is imposed, which shall be deposited before the learned Commissioner of compensation Dhubri and shall be payable to the claimant. The Registry shall forward a copy of this order to the claimant/ respondent No.2 and to the learned Commissioner, Employees Compensation Claims Tribunal, Dhubri. The learned Commissioner, Employees Compensation Claims Tribunal, Dhubri shall thereafter furnish a complying report to the Registry in respect of compliance of payment of cost. Until and unless such cost is deposited the question that may be raised by the present application regarding jurisdiction shall not be determined.

17. While parting with the record, this court puts its appreciation for its able assistance rendered by Mr. S Chakraborty, learned counsel. Registry is directed to pay the remuneration to Mr. S Chakraborty in terms of extant norms.

JUDGE

Comparing Assistant