

GAHC010234592018



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

Case No. : WP(C)/7303/2018

RANGAJAN TEA ESTATE AND ANR.
P.O. MORONGI P.S. GOLAGHAT,
PIN - 785621, DIST.GOLAGHAT, ASSAM.

2: SRI KAILASH NARAYAN GUPTA
S/O LATE G.N. GUPTA
THE GENERAL MANAGER

RANGAJAN TEA ESTATE
R/O SRIMANTO NAGAR

P.S. GOLAGHAT
PIN -785621

DIST. GOLAGHAT
ASSAM

VERSUS

THE COMMISSIONER (COMMISSIONER FOR EMPLOYEES
COMPENSATION) AND ANR.
GOLAGHAT, ASSAM,
GOLAGHAT, PIN - 785621, ASSAM.

2:SRI DINDAYAL MOLLIK
S/O LT. SAMBHU MOLLIK
RANGAJAN TEA ESTATE
P.O. MARANGI
P.S. GOLAGHAT
DIST. GOLAGHAT
ASSAM
PIN -785621

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : MR. M DUTTA (R1)

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

15.03.2024

Heard Mr. S. Borthakur, learned counsel for the petitioners. Also heard Mr. D. Choudhury, learned counsel for the respondent No.2 and Mr. K.M. Bora, learned counsel appearing on behalf of Mr. M. Dutta, learned counsel for the respondent No.1.

2. This writ petition has been filed against the order dated 12.02.2018 and 22.05.2018 passed by the learned Commissioner, Employee's Compensation, Golaghat in E.C. No. 12/2015. The facts of the case, in brief, is that the respondent No.2 was a permanent labourer/employee of the petitioner No.1 Company. On 16.05.2015, while he was cleaning the CTC Factory in the tea garden along with other workers, the respondent No.2 met with an accident and sustained grievous injuries on his person, which required amputation of 3 fingers of his right hand.

3. The respondent No.2 thereafter preferred a claim petition being E.C. No. 12/2015 before the Court of the learned Commissioner, Employee's Compensation, Golaghat, which was registered as GEC No.12/2015. The petitioners received notice of the pendency of GEC No.12/2015. However, despite appearing before the Court of the learned Commissioner, Employees Compensation, they did not take any further steps in the matter.

4. GEC No. 12/2015 was disposed of by the Court of the learned Commissioner, Employee's Compensation Golaghat vide judgment dated 12.02.2018, by awarding a sum of Rs.2,81,115/-. The amount of Rs.2,81,115/- was to be paid within 30 days from the date of issuance of the judgment dated 12.02.2018, failing which the petitioners were to pay interest @12% per annum on the awarded amount till realization.

5. The petitioners being aggrieved by the judgment dated 12.02.2018 on the ground that the same had been passed ex-parte, they submitted an application under Order IX Rule 13 CPC to vacate the impugned judgment dated 12.02.2018 and to allow the petitioner to contest the case by filing written statement.

6. The application of the petitioners under Order IX Rule 13 CPC was dismissed by the learned Commissioner vide order dated 22.05.2018, by stating that according to Rule 32(2) of the Workmen's Compensation Rules, 1924, no addition or alteration could be made to a judgment passed by the Commissioner, other than correction of a clerical and arithmetic mistake arising from any accidental slip or omission.

7. Being aggrieved with the impugned judgment dated 12.02.2018 and the order dated 22.05.2018, passed in GEC No. 12/2015, the petitioner has filed the present writ petition.

8. The petitioners' counsel submits that as the petitioners had paid all the medical bills of the respondent No.2 and as the respondent No.2 had received his salary, they were surprised to learn of the impugned order directing them to

pay Rs.2,81,115/- as compensation. He submits that if the petitioners were allowed to make submissions before the learned Commissioner with regard to the expenditure already incurred by the petitioners for the hospital expenses of the respondent No.2, the compensation amount awarded by the learned Commissioner would have been reduced. The learned counsel for the petitioners submits that in terms of Rule 41 of the Workmen's Compensation Rules, 1924, the learned Commissioner is competent to hear an application under Order IX Rule 13 CPC against the judgment dated 12.02.2018 and that the observation that the Commissioner cannot make any addition or alteration to the impugned ex-parte judgment is incorrect. He accordingly submits that the above two impugned orders should be set aside and the petitioners should be allowed to contest the case of the respondent No.2 before the learned Commissioner.

9. Mr. D. Choudhury, learned counsel for the respondent No.2 submits that the petitioners have not denied the fact that the respondent No.2 had lost 3 fingers while working in the CTC Factory of the petitioners' garden. Further, there is no denial of the fact that the respondent No. 2 is an employee of the petitioners. Notices having been received by the petitioners in connection with GEC No. 12/2015 and the petitioners having attended the proceedings in GEC No.12/2015, there is no infirmity in rejecting the petitioners' application under Order IX Rule 13 of the CPC. He further submits that as per Section 30 of the Employee's Compensation Act, 1923, the petitioners could file an appeal against the impugned judgment passed by the learned Commissioner, which the petitioners have declined to do. He accordingly submits that the present writ petition should be dismissed, as statutory remedy was available to the petitioners.

10. I have heard the learned counsels for the parties.

11. As can be seen from the submissions made and the pleadings of the parties, the respondent No.2 met with an accident on 16.05.2015, while working in the garden of the petitioners, which led to the loss of 3 of his fingers. The respondent No.2 was an employee of the petitioner Company. The impugned judgment dated 12.02.2018 passed by the learned Commissioner, Employee's Compensation, Golaghat shows that the compensation awarded to the respondent No.2 pertains to his loss of earning capacity, which had been calculated in terms of Section 4 of the Employee's Compensation Act, 1923 and the Schedule. Further, though the income of the respondent No.2 was Rs.8000/- per month, the learned Commissioner has taken the income of the respondent No.2 as Rs.7,200/- per month. This Court does not find any infirmity in the calculation made by the learned Commissioner in awarding the compensation amount to the respondent No.2. The above being said, the question to be decided is whether there was any infirmity in rejecting the petitioners' application under Order IX Rule 13 Code of Civil Procedure, 1908 by the learned Commissioner. As stated earlier, the petitioners were aware of the pendency of GEC No.12/2015 and had also participated in the same.

12. Order IX Rule 13 CPC provides that in a case in which a decree has been passed ex-parte against a defendant, he may apply to the Court, by which the decree was passed for an order to set it aside, if he satisfies the Court that the summons were not duly served or that he was prevented by any sufficient cause from appearing when the suit was called for hearing. In the present case, neither of the conditions has been satisfied by the petitioners. Besides the above, the appeal provision, i.e., Section 30 of the Employee's Compensation

Act, 1923 has also not been taken recourse to by the petitioners.

13. In the case of ***Radhey Shyam & Anr. Vs. Chhabhi Nath & Ors***, reported in ***(2015) 5 SCC 423***, the Supreme Court has held that judicial orders of Civil Courts are not amenable to writ jurisdiction under Article 226 and that challenge to judicial orders could lie only by way of a statutory appeal or revision or under Article 227, but not by way of Article 226. In the present case, the order passed by the learned Commissioner, Employee's Compensation, Golaghat could have been challenged by way of Section 30 of the Act. However, instead of taking recourse to the statutory provision available for filing an appeal, the petitioners have filed the present writ petition.

14. The law laid down by the Supreme Court in ***Radhey Shyam (supra)*** is applicable to the facts of this case, inasmuch as, the writ petitioners writ petition is not maintainable, in view of there being a statutory appeal available to them for challenging the impugned orders.

15. On considering all the above facts, this Court is of the view that no case for interference with the impugned judgment dated 12.02.2018 and order dated 22.05.2018 passed by the learned Commissioner, Employee's Compensation, Golaghat in G.E.C. No. 12/2015 has been made out.

16. The writ petition is accordingly dismissed.

17. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant