

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

201

FAO No.1006 of 1995
Decided on : 02.03.2017

National Insurance Co. Ltd.

... Appellant

Versus

Jaswinder Singh another

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present:- Mr.Abhishek Goyal, advocate for
Mr.Vandana Malhotra, Advocate for the appellant.

G.S.Sandhawalia, J.

The present appeal, under Section 30 of the *Employees Compensation Act, 1923* (for short the 'Act'), filed by the Insurance Company, is directed against the order dated 23.12.1994, passed by the Commissioner, Amritsar. Vide said order, a sum of Rs.28,152.50 paisa, was assessed, as compensation on account of 25% disability suffered by the employee in the accident, which took place on 22.10.1990 while working as a cleaner of truck. Another sum of Rs.20,000/- was directed to be paid on account of the medical bills which had been placed on record as *Ex.A-2 to 26*, since the case of the workman was that he spent about Rs.30,000/- for his treatment.

The accident had taken place in Panipat (Haryana), whereas claim application had been filed at Amritsar, and a plea was taken that the Commissioner, Amritsar has no jurisdiction to entertain the claim application, resultantly, the issue qua that aspect was also framed. Reliance has been placed by the Commissioner upon the judgment of this

Court in case of Rajni Rani Vs. Om Parkash, 1992(2)PLR 1, wherein it has been held that the accident in that case had taken place in District Shimla and the case had been decided by the Commissioner at Ambala.

However, reliance upon Rajni Rani Vs. Om Parkash 1992 (3) SCT 38 by the Commissioner, as such, would not be of any help to the respondents since in the said case, the issue of jurisdiction had not been, as such, adjudicated upon and neither the provisions of Section 21 were subject matter of consideration.

The first substantial question of law raised by counsel for the appellant that the Commissioner, Amritsar had no jurisdiction to entertain the claim application under Section 21 (1) of the Act, is not liable to be accepted. The relevant part of unamended Section 21 (1), which was in force at the time of the accident in 1990 and at the time of adjudication in 1994, reads as under:-

“Section 21- Venue of proceedings and Transfer-

(1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made thereunder, be done by or before a Commissioner for the area in which the accident took place which resulted in the injury.”

The relevant part of the said Section, as substituted w.e.f. 01.10.1996, reads as under:

“(1) Where any matter under this Act is to be done by or before a Commissioner the same shall subject to the provisions of this Act and to any rules made hereunder be done by or before the Commissioner for the area in which-

- (a) the accident took place which resulted in the injury; or
- (b) the employee or in case of his death the dependant claiming the compensation ordinarily resides; or
- (c) the employer has his registered office.”

The substituted provisions of Section 21 were to grant benefit and was a welfare piece of legislation to safeguard the rights of the workman, at that point of time. The purpose was that the migrant labourers came from all over the country and they could apply before the Commissioner where the claimants claiming compensation ordinarily resides and not whether he resided at the place of the accident. This aspect was also noticed by the Apex court in **Morgina Begum Vs. Managing Director, Hanuman Plantation Ltd. 2007 (11) SCC 616** wherein the order of the High Court was set aside, which had allowed the appeal of the employer regarding the issue of jurisdiction and the Commissioner not having the jurisdiction to entertain the claim petition. In the said case, the parents of the deceased-employee were residing with their son-in-law, after the death of their son on whose account the claim had been preferred. Relevant portion of the judgment reads as under:

“6. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible

for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue in such a claim petition because of the financial and other hardship. It would entail the poor claimant traveling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen.”

In the present case, as noticed, at the time of accident, in the year 1990 and at the time of adjudication in the year 1994, the Act did not provide that the employee or in the case of his death, the dependents could claim compensation from the Commissioner where they ordinarily resided, under Section 21(1)(b). The effect of substitution would, thus, be that it would come into force as if the old section did not exist and as if it was operative from day one. Reliance can be placed upon the said principles which were laid down by the Apex Court that substitution results in the repeal of the provision and its replacement by the new provision. Reliance can be placed upon the observations made in **State of Rajasthan Vs. Mangilal Pindwal 1996 (Supp.) SCR 98.**

In the said case, the compulsory retirement of an employee had been set aside on the ground that there was non-compliance of the rules which provided that 3 months pay and allowances had to be given in lieu of any previous notice. The said action had been set aside on the ground that the rule had not been complied with and there was a shortfall of the allowances. In the meantime, the rules had been substituted to the effect that the Government employee would be entitled for 3 months pay and allowances in lieu of the notice. The Division Bench of the High

Court had rejected the appeal filed by the State on the ground that the amendment made was invalid, since the amendment provision was not in existence. The Apex Court set aside the said reasoning by holding that once the rules were substituted, it would mean that it would operate from the period provided and the notification could not be held to be invalid.

Relevant portion reads as under:

“9. As pointed out by this Court, the process of a substitution of statutory provisions consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [See: Koteswar Vittal Kamath v. K.Rangappa, 1969 (3) SCR 40, at p.48]. In other words, the Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction.

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12. This means that as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. The effect of the amendments that were introduced in sub-rule (2) of Rule 244 of the Rules vide notifications dated September 2, 1975 and November 26, 1975 whereby the said sub-rule was substituted with effect from September 2, 1975 is that sub-rule (2) which was introduced on August 19, 1972 ceased to exist with effect from September 2, 1975 but it was operative during the period from August 19, 1972 to September 1, 1975. It is settled law that a rule made in exercise of the power conferred by [Article 309](#) of the Constitution can have retroactive operation. Since sub-rule (2) of Rule 244 of the Rules, as introduced in August, 1972, was operative during the period from August 19, 1972 to September 1, 1975, it could be amended in exercise of the rule

making power under [Article 309](#) of the Constitution so as to operate during the period from August 19, 1972 to September 1, 1975. The notification dated March 11, 1976, by substituting sub-rule (2) of Rule 244 of the Rules, repealed the said provision that was operative during the period from August 19, 1972 to September 1, 1975 and replaced it by another Provision which was to be operative during the said period. The said notification Cannot be held to be invalid on the basis that the said amendment sought to amend a provision which was not in existence. The Statement of Law in Sutherland on Statutory Construction, on which reliance was placed by the learned Judges of the High Court, that a repealed law cannot be amended has no application in the present case.”

In similar circumstances, in **Zile Singh Vs. State of Haryana** **2004 (Supp.) SCR 272**, the said view was followed by a Three Judges Bench, by holding that substitution had the effect of just deleting the old rule and making the new rule operative, as if the old one ceased to exist and the new rule was brought into existence in its place. Resultantly, in the said case, the second amendment, which was retrospective from the date of the first one, was upheld. Relevant portion reads as under:

“24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, *ibid*, p.565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. and Ors. Vs. State of U.P. and Ors.* (2002) 2 SCC 645, *State of Rajasthan Vs. Mangilal Pindwal*, (1996) 5 SCC 60, *Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co.* (1969) 1 SCC 255 and

A.L.V.R.S.T. Veerappa Chettiar Vs. S. Michael & Ors. AIR 1963 SC 933. In West U.P. Sugar Mills Association and Ors.'s case (supra) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal's case (supra) this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar's case (supra) a three-Judges Bench of this Court emphasized the distinction between 'supersession' of a rule and 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.”

Resultantly, keeping in view the above discussion, this Court is of the opinion that once the Act had been substituted and Section 21 had been introduced by giving the employee and the dependent's right to file claim before the Commissioner where they ordinarily reside, would thus, mean that the jurisdiction of the Commissioner would be deemed to be present. The appeal having been filed, thereafter, would be a continuation of the trial and therefore, the order would not be liable to be interfered on the ground of lack of jurisdiction.

Qua the issue of compensation, the disability certificate dated 7.8.1991 had been placed on record, duly proved by the Lekh Raj, Steno in the office of Civil Surgeon, Amritsar. The owner of the truck,

respondent No.2 had also supported the claim of the workman, and in view of the fact that the copy of the policy having been brought on record as Ex.AW-4/1, the amount was calculated as per the provisions of the Act and liability was put on the appellant by taking salary as Rs.1000/-. Accordingly, the compensation was rightly assessed.

However, a sum of Rs.20,000/- has been awarded for the treatment, which had been incurred by the employee on account of fact that the amount had been spent for his treatment on the injuries received, which is not covered under the Policy. Thus, counsel for the appellant has raised the second substantial question of law that in the absence of any statutory right under the Act, the Commissioner was not justified in allowing a sum of Rs.20,000/-, on account of medical bills, on the ground that if the workman was covered for the accident arising out of the course of employment, apart from the injury suffered, he was also entitled for the reimbursement of the expenses. It is to be noticed that at a subsequent point of time, though this right has been incorporated in Section 4(2A) w.e.f. 18.01.2010, wherein the employee can seek reimbursement of the actual medical expense incurred by him for treatment of injuries caused during the course of employment. Relevant portion reads as under:

“4(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.”

Applying the same principle as above, while deciding the first question of law, it is to be noticed that it was only an amendment made at a subsequent point of time and the said provision was not there

when the accident occurred and when the case was adjudicated upon. Thus, in the absence of any statutory right, the Commissioner was not justified in granting the amount of Rs.20,000/- as actual expenditure incurred by the employee for his treatment on account of the injuries caused during the course of his employment.

Reference can be made to the judgment of the Apex Court in **Kerala State Electricity Board and another Vs. Valsala K. and another etc. 1999, SCR 657**, wherein it was held that the date of accident is the crucial date which is to be taken into consideration for the purpose of determining the compensation. Thus, at the time of adjudication, in the absence of the amended provisions, the benefit granted could not have been allowed. However, the fact remains that more than 2 decades earlier, the order was passed and in such circumstances, it would be highly unjustified that the Insurance Company should be given the right to recover the amount from the employee. In **Valsala K.** (supra), it was held as under :-

“Insofar as these special leave petitions are concerned, we find that the accident took place long time back. Compensation became payable to the workmen, as it is not disputed that the accidents occurred during the course of employment, as per the law prior to the amendment made in 1995. Keeping in view the peculiar facts and circumstances of these cases, pettiness of the amounts involved in each of the cases and the time that has since elapsed, we are not inclined to interfere with the impugned order, decided on the basis of the 1995 amendment, in exercise of our jurisdiction under Article 136 of the Constitution of India and therefore, dismiss the special leave petitions, but after clarifying the

law, as noticed above.”

Resultantly, the second substantial question of law is answered in favour of the Insurance Company, and it is held that the Commissioner had no jurisdiction to direct reimbursement of the amount. Resultantly, the present appeal is disposed of by holding that the Commissioner's territorial jurisdiction to adjudicate on the issue, is not liable to be interfered with. However, the sum of Rs.20,000/- which was directed to be paid on account of medical bills was not justified. However, the right to recover as such by the Insurance Company is declined in the facts and circumstances.

[G.S.Sandhawalia]
Judge

02.03.2017
sd/sailesh

Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes