

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.902 OF 2019

Mosa Anand Rajulu ...Appellant
 vs.
 M/s. V. Ships Monaco and Another ...Respondents

Mr. Devendranath Joshi, for the Appellant
 Mr. Tariq Baig a/w. Ms. Sumnari i/b. M/s. Bhatt & Saldhana, for the Respondents.

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CORAM : N.J. JAMADAR, J.
RESERVED ON : 10th DECEMBER, 2021
PRONOUNCED ON : 19th JANUARY, 2022

JUDGMENT :

1. This appeal under section 30 of the Employees' Compensation Act, 1923 (the Act, 1923) is directed against the judgment and award dated 1st March, 2019 passed by the learned Commissioner for Employees Compensation and Judge, 6th Labour Court, Mumbai in Application (ECA) No. 120/C-32/2016 whereby the application came to be partly allowed and compensation was awarded in accordance with the provisions of the Act, 1923 disallowing the claim for compensation in accordance with the TCC agreement.

2. The background facts leading to this appeal can be stated as under:

The appellant/applicant was employed as an Ordinary

Seafarer with respondent/opposite party No. 1 at ship MV DT PROVIDENCE. On 30th March, 2014, while on board, the applicant sustained blunt injury to spine. The applicant was taken to Walgreen Hospital in United States of America. After treatment, the applicant resumed duty on 7th April, 2014. As pain persisted, the applicant, was again taken to hospital in USA and was diagnosed with Lumbago. The applicant claimed that since he was involved in mooring operations on the ship, he had suffered the injury in the course of employment. The applicant was signed off from the ship on 10th April, 2014.

3. On reaching the shore at Mumbai the applicant was examined by Dr. Belani, the medical consultant of the respondent No. 1. The applicant was eventually operated at Breach Candy Hospital. Despite surgery, the applicant could not regain the strength and continued to suffer the consequences of the injury. The Medical Board at RIMS General Hospital, upon examination, declared that the applicant was not fit to perform heavy work and undergo the journey. The Medical Board at Nair Hospital, Mumbai initially assessed temporary disability at 86% and later on, post re-assessment, declared that the applicant suffered 85% permanent disability. Since, the claim for compensation was not met by the

respondents the applicant preferred an application for compensation before the learned Commissioner.

4. The applicant specifically asserted that the application was preferred for compensation in accordance with the scale of compensation prescribed in the ITF Uniform "TCC" Collective Agreement and the special provision relating to Master and Seamen under section 15 of the Act, 1923. Since, the applicant was drawing wages of 1700 USD and the applicant was 39 years of age, at the time of occurrence, the compensation of 190638 USD (Rs. 1,20,10,194/- at an exchange rate of Rs. 63/- per USD) was claimed.

5. The respondent Nos. 1 and 2 resisted the claim of the applicant by filing written statement.

6. After appraisal of the evidence led by the applicant and respondent Nos. 1 and 2 and the documents tendered for his perusal, the learned Commissioner was persuaded to record the findings that the learned Commissioner had jurisdiction to entertain and decide the application; the employer-employee relationship between the applicant and respondents was established; it was proved that the applicant was getting wages of 1700 USD per month

and the applicant sustained injury in the course of employment and on account of disability arising there from, the applicant lost 100% earning capacity.

7. The learned Commissioner, however, held that the applicant was entitled to compensation in accordance with the provisions of the Act, 1923 and not in terms of the TCC Agreement and thus determined quantum of compensation in accordance with the provisions contained in section 4 of the Act, 1923 and awarded Rs. 8,97,120/-. The respondents were further directed to pay interest on the said amount at the rate of 12% p.a. and also penalty equivalent to 50% of amount of compensation.

8. Being aggrieved by and dissatisfied with the aforesaid determination, under which learned Commissioner declined to award compensation in accordance with the scale provided in the TCC Agreement, the applicant is in appeal.

9. I have heard Mr. Devendranath Joshi, learned counsel for the appellant and Mr. Tariq Baig, learned counsel for the Respondents at some length. With the assistance of the learned counsel for the parties, I have perused the material on record including the

impugned judgment, depositions of the witnesses and the documents relied upon by the parties.

10. Evidently, the substantial question of law which crops up for consideration in this appeal is whether the learned Commissioner was justified in awarding the compensation in accordance with the provisions of the Act, 1923 only and declining to accede to the prayer of the applicant to determine the compensation in accordance with the terms of TCC Agreement ?

11. Mr. Joshi, learned counsel for the appellant, strenuously submitted that the learned Commissioner misdirected himself in holding that the learned Commissioner has jurisdiction to award the compensation in accordance with the provisions of the Act, 1923 only. Amplifying the submission, Mr. Joshi would urge that the learned Commissioner lost sight of the fact that section 15 of the Act, 1923 which incorporates the special provisions relating the Master and Seamen, carves out an exception to section 4 of the Act, 1923. The learned Commissioner, according to Mr. Joshi, was in error in not giving effect to the special provisions under section 15 of the Act, 1923.

12. Mr. Joshi would further urge that the concept of award of compensation on the basis of an agreement between the parties is not alien to the scheme envisaged by the Act, 1923. Inviting the attention of the Court to the provisions contained in section 28 of the Act, 1923, Mr. Joshi submitted that under sub section (2) of section 28, such an agreement is enforceable notwithstanding anything contained in the Indian Contract Act, 1872 or any other law for the time being in force. It was further submitted that section 4 of the Act, under which the amount of compensation is to be determined, is subject to other provisions of Act, 1923. Thus, sections 15 and 28 of the Act, 1923 can be said to be the provisions which override the general provisions contained in section 4 of the Act in the matter of determination of quantum of compensation.

13. In opposition to this Mr. Baig, the learned counsel for the respondents stoutly submitted that the appeal does not deserve to be entertained. The issue sought to be raised by the appellant, according to Mr. Baig is no longer res integra. By a catena of decisions starting with **B.T. Shipping London Ltd. And Anr. vs. Arti Narayanan and Ors.**¹, it is well neigh settled that the Commissioner under the Employees' Compensation Act, 1923 has no jurisdiction to award compensation otherwise than in accordance with the

1 2000(2) ALL MR 86.

provisions of the Act, 1923. Therefore, according to Mr. Baig, the learned Commissioner was within his rights in awarding the compensation in accordance with the provisions contained in Act, 1923. Thus, no fault can be found with the impugned judgment.

14. It would be contextually relevant to note that the learned Commissioner, after adverting to the provisions contained in section 28, specifically recorded that the instant case would not be governed by the said provisions as the TCC Agreement, relied upon by the applicant, was not registered in the manner prescribed by sub section (1) of section 28. Thus, the applicant, was not entitled to enforce such an unregistered agreement to seek more compensation than the one prescribed under the Act, 1923.

15. Whether the aforesaid approach of the learned Commissioner is justifiable ?

16. The provisions of the Act provide a legitimate answer. Section 3(1) declares that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II. Sub section (1) of section 4 governs the

determination of quantum of compensation. It provides that subject to the provisions of the said Act, the amount of compensation shall be as prescribed in the clause (a) to (d) subsumed thereunder. Section 10 of the Act provides that no claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner provided under the Act as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death.

17. Thus, section 3 creates the liability of an employer to pay compensation in accordance with the provisions of the Act. Section 4 regulates the determination of quantum of compensation in accordance with the provisions of the Act. Section 10 confers jurisdiction upon the learned Commissioner to entertain the claim for compensation under the provisions of the Act upon fulfillment of the conditions prescribed therein.

18. Undoubtedly, section 4(1) begins with the expression, “subject to the provisions of this Act”. It plainly implies that if the Act provides for determination of compensation in a manner otherwise than the one prescribed under section 4(1), such a provision will

prevail. At this juncture, it may be expedient to note the provisions contained in section 15 and 28 of the Act, which Mr. Joshi pressed into service, as the special provisions envisaged by aforesaid expression, “subject to the provisions of this Act” in sub section (1) of section 4.

19. Section 15 of the Act, 1923 reads as under:

15. Special provisions relating to masters and seamen.-

This Act shall apply in the case of [employees] who are masters of ships or seamen subject to the following modifications, namely:--

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost. Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured master or seaman is discharged or left behind in any part of India or in any foreign country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in

the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claim, be admissible in evidence--

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness; and

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused, and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

(5) No compensation shall be payable under this Act in respect of any injury in respect of which provision is made for payment of a gratuity, allowance or pension under the War Pensions and Detention Allowances (Mercantile Marine, etc.) Scheme, 1939, or the War Pensions and Detention Allowances (Indian Seamen, etc.) Scheme, 1941, made under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939 (2 & 3 Geo. 6, c. 83), or under the War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942, made by the Central Government.

(6) Failure to give a notice or make a claim or commence proceedings within the time required by this Act shall not be a bar to the maintenance of

proceedings under this Act in respect of any personal injury, if-

(a) an application has been made for payment in respect of that injury under any of the schemes referred to in the preceding clause, and

(b) the State Government certifies that the said application was made in the reasonable belief that the injury was one in respect of which the scheme under which the application was made makes provision for payments, and that the application was rejected or that payments made in pursuance of the application were discontinued on the ground that the injury was not such an injury, and

(c) the proceedings under this Act are commenced within one month from the date on which the said certificate of the State Government was furnished to the person commencing the proceedings.

20. From the text of section 15 extracted above, it becomes abundantly clear that the said section declares that the provisions of the Act, 1923 shall apply in case of employees who are Masters of ship or Seamen subject to certain modifications. The modifications incorporated in the clauses (1) to (6), on a plain reading, do not indicate that they govern the aspect of determination of quantum of compensation. The modifications are, by and large, as regards the limitation, procedure and entitlement to compensation where provisions are made in other enactments.

21. Section 28 of the Act, 1923 reads as under:

28. Registration of agreements.-

(1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any

compensation has been so settled as being payable to a woman, or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:

Provided that--

(a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;

(b) Omitted by Act 5 of 1929;

(c) the Commissioner may at any time rectify the register;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872 (9 of 1872), or in any other law for the time being in force.

22. The phraseology of section 28 indicates that the parties are at liberty to work out the amount of compensation to be paid. However, a memorandum recording the amount of compensation to be paid in accordance with the agreement arrived at between the parties shall

be sent by the employer to the Commissioner. The later, in turn, is enjoined to record the memorandum in the register in a prescribed manner upon being satisfied as to its genuineness. Clause (d) of the proviso to section 28(1) empowers the Commissioner not to register the agreement on account of inadequacy of the compensation so agreed, or, if he finds that, such an agreement has been brought about by fraud or undue influence or other improper means.

23. The registration of the agreement incorporating the quantum of compensation agreed to be paid is thus not an empty formality. Sub section (1) of section 28 contains inbuilt safeguards to ensure that the employees are not contracted out of beneficial provisions of the Act, 1923 by adopting disingenuous methods. Mere execution of the agreement is not enough. Such an agreement is required to be sent by the employer to the learned Commissioner. The legislature expects the learned Commissioner to register such an agreement only when he is satisfied about its genuineness. Furthermore, even when the learned Commissioner is satisfied about the genuineness of the agreement, the proviso empowers him to refuse the registration where he is of the opinion that the compensation agreed upon is inadequate or the agreement itself suffers from the vice of fraud, undue influence, or is the outcome of improper means.

24. Undoubtedly, sub section (2) of section 28 declares such an agreement enforceable, provided it has been registered under sub section (1). Sub section (2) of section 28 is required to be read in conjunction with sec.29 which spells out the consequences of failure to register the agreement, in the manner prescribed by section 28.

25. Section 29 reads as under:

Effect of failure to register agreement.-

*Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the *[employee] by way of compensation whether under the agreement or otherwise.*

26. Section 29 declares in clear and explicit terms that in the event an agreement, required by section 28 to be registered, is not registered, the employer shall be liable to pay full amount of compensation which he is liable to pay under the provisions of the Act, 1923. Section 29 thus reinforces the principle that compensation is required to be paid in accordance with provisions of the Act, 1923, save and except in a case where the agreement is registered under section 28.

27. Mr. Joshi, learned counsel, made an endeavour to bank upon the later part of section 29 namely “notwithstanding anything contained in the proviso to sub-section (1) of section 4 the employer shall not be entitled to deduct more than half of any amount paid to the employee by way of compensation whether under the agreement or otherwise,” to bolster up the submission the said provision overrides section 4.

28. I am afraid to agree with the construction sought to be put by Mr. Joshi. The later part of section 29 cannot be so construed as to denude the earlier part of section 29 its content and meaning. The later part, if properly construed, simply implies that if under the agreement the employer has paid certain amount to the employee, by way of compensation, he shall not be entitled to deduct more than half of such amount paid to the employee unless the Commissioner otherwise directs, on the ground that such an agreement is not registered.

29. In the backdrop of the aforesaid conspectus of the provisions of the Act, in my view, the learned Commissioner was justified in holding that since TCC Agreement was not registered in the manner envisaged by section 28 of the Act, 1923, the applicant was not

entitled to draw any mileage therefrom.

30. The submission of Mr. Baig that the controversy sought to be raised by the appellant is no longer *res integra* is well founded. In a long line of decisions starting from **B.T. Shipping London Ltd.** (supra), this Court has held that the Commissioner has no jurisdiction to award compensation otherwise than in accordance with the provisions of the Act, 1923. In the case of **B.T. Shipping London Ltd.** (supra), the learned single Judge of this Court, after an analysis of the provisions of the Act, enunciated the legal position as under:-

9. A conjoint reading of the aforesaid sections would show that the Workmen's Compensation Commissioner can order the employer to deposit further sum if in his opinion the amount so deposited is insufficient as provided under the Act. Schedule IV under [section 4](#) provides the factors for working out lump sum amount for compensation in case of total disablement and/or death. Obviously, in the very scheme of the Act, 1923, the Workmen's Compensation Commissioner cannot order the employer to deposit the amount which exceeds the amount prescribed under the Act. In other words the scale of compensation set out in Schedule IV under [section 4](#) is the compensation that can be awarded by the Commissioner under the Act and not beyond it.

.....
The objective of the Workmen's [Compensation Act](#) is to ensure that in the case of injury or permanent disablement or death of a workman by accident out of and in the course of employment, his employer pays him compensation in accordance with the

provisions contained in the Workmen's Compensation Act and such employee who has suffered injuries or permanent disablement or the dependants of the deceased employee are not left high and dry. Therefore, the compensation that can be awarded by the Workmen's Compensation Commissioner has to be in accordance with the compensation prescribed under the Act of 1923 and not exceeding thereto. Even in exercise of his powers under section 22-A the Workmen's Compensation Commissioner can only order the employer to deposit further amount if he finds and is satisfied that the amount deposited by the employer is less than the compensation prescribed under the Act. The adequacy of deposit has to be seen by the Workmen's Compensation Commissioner to the extent and in the light of compensation prescribed under the Act and not beyond it.

31. In the said case, repelling the submission that it was open to the employer to enter into an agreement for compensation exceeding the amount of compensation provided under the Act, the learned Judge observed as under:

9. I am afraid sections 17 and 19(2) which have been relied upon by Mr. Vaidya in support of his contention does not support him at all. Section 17 provides that any contract or agreement whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the 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 this Act. The service conditions in which it has been agreed by the company to provide cover to the deceased in accordance with Appendix E to a maximum of three and a half times annual pay is not related to section 17. It is open to the dependants to enforce their claim as per the

agreement in the service conditions in accordance with law but it cannot empower the Workmen's Compensation Commissioner to award or order for deposit of compensation of that amount which exceeds the compensation prescribed under the Act. Section 19(2) of the Act of 1923 only provides that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under the Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. For enforcement of the Clause in the service conditions whereby the employer has undertaken to provide cover in accordance with Appendix E to a maximum of three and a half times annual pay can be enforced through Civil Court and jurisdiction of Civil Court to that extent cannot be said to be barred under section 19(2). So far as the Workmen's Compensation Commissioner under the Act of 1923 is concerned he is only empowered to award compensation or order deposit of compensation as prescribed under the Act and not exceeding thereto.

32. The aforesaid pronouncement has been consistently followed by this Court in the cases of **The Shipping Corporation of India Limited vs. Ratanji Somabhai Tandel²**; **Husain Abdul Kadir Khatib vs. The Shipping Corporation of India³**; **M/s. Deep Sea Shipping and Manning Services Pvt. Ltd. vs. Manu Mamachan Bahurasanam Kinnsyumukhy⁴**

33. The upshot of the aforesaid consideration is that the claim of

² 2011(7) ALL MR 128.

³ First Appeal NO.2371 of 2005 decided on 10-09-2009.

⁴ C.A. No.2915 of 2018 in FA(St.) No.20981 of 2018 dated 04-10-2018.

the applicant for compensation, in accordance with the terms of the TCC Agreement, was rightly disallowed by the learned Commissioner.

34. Thus, the appeal deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The appeal stands dismissed.
- 2] Parties shall bear their respective costs.

(N.J. JAMADAR, J.)