

07.10.2024

MONDAY

Court : 04
Item : 06
(AD)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

FMAT 244 of 2023

With

CAN 1 of 2023

CAN 2 of 2023

The Agent, Khottadihi U/G Project,
Eastern Coalfields Limited

Versus

Smt. Memawati Devi

**Mr. Soumya Majumdar,
Mr. Syed Nurul Arefin,
Mr. Syed Moyeenul Arefin,
Mr. Rahul Singh.**

.....for the Appellant

**Ms. Rukmini Basu Roy,
Ms. Gopa Das Mukherjee,
Mr. Shameek Chakraborty.**

.....for the Respondent

1. The appellant before us in the present appeal is aggrieved by the decision of the Commissioner under the Employees' Compensation Act, 1923 (hereafter referred to as the 'Act') whereby and whereunder compensation has been awarded to the tune of Rs. 5,98,680 with simple interest accrued thereupon @12% per annum from the date of accident till the date of realization of the amount.
2. The brief narration of the factual matrix of the case is essential for a proper consideration of the matter. On 06.02.2018, the husband of the claimant while he was working as R.H.D. crew man No. 693447 at the Khottadihi Colliery in Shift 1 at R-III/II LHD Development section situated underground, died. The post-mortem revealed the death to be caused by severe myocardial infraction.

3. Before the Court of Commissioner, the present appellants have denied the death to have occurred in connection with any incident or as a result of the nature of duties, or in the course of duties. The employer (appellant), however, has not produced any witness or evidence before the Commissioner.
4. The learned Counsel for the appellant has submitted that there is no evidence to even suggest that the death has occurred in connection with the duties claimed to have been performed by the deceased employee and, therefore, the Commissioner's finding to this effect is perverse. The findings are unsustainable also for the reason that it is based on an adverse presumption due to non-implementation of the agreement dated 06.02.2018, which contained a clause that the O.P. shall cause an enquiry into the cause of death of the employee to be conducted by the Eastern Coalfields Ltd. Safety Board at the earliest. Non-carrying out of such enquiry has been taken to be a basis of drawing adverse inference against the employee, which is unsustainable in law.
5. The award of the Commissioner also suffers from a jurisdictional error since the finding of there being a link or casual connection of the employment with death of the deceased is arrived at without any legal evidence to this effect. The award, therefore, is unsustainable. In support of such submissions he has relied upon decision of the Apex Court in the case of ***Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali & Anr.*** reported in ***(2007) 11 SCC 668.***
6. It is the specific claim of the wife of the deceased, who is the respondent in the present proceedings

that her husband's monthly wages was to the tune of Rs. 8000/- per month and that he was aged about 51 years of age. As per the claim set out by the present respondent before the Commissioner under the Act, the death of her husband occurred while he was on duty. Since the nature of duties being discharged by her husband as R.H.D. crew was a strenuous one, his death is asserted to have occurred on account of such strenuous duties and in the course of his employment.

7. It would be relevant here to take note of the agreement dated 06.02.2018 (Exhibit-3) which has been relied upon by the claimant. The said agreement was entered into between the union representatives and the management representatives on the date of unfortunate demise of the claimant's husband. The 4th demand out of 8 demands made by the union representatives, as enumerated in the agreement dated 06.02.2018 reads as follows:-

"4. Compensation as per Compensation Act is to be deposited with Compensation Court within one month."

8. In respect of this proposal the agreement dated 06.02.2018 recorded the following terms:-

"2. Compensation will be submitted to the commissioner under Employees Compensation Act within one month of submission of postmortem report."

9. Existence of this agreement is not denied or disputed by the appellant in the written statement filed by them in claim case No. 18 of 2019 before the Workmen's Compensation Commissioner at Durgapur.

10. In the written statement filed by the present appellants before the Commissioner there is a

specific admission that deceased was an employee of the present appellants and that he died due to heart attack.

11. Apart from the agreement dated 06.02.2018, the claimant has also got marked as exhibits, the identity cards of the deceased employee, the pay slip covering the period within which the death has occurred, the post-mortem report as well as the death certificate.
12. The Manager of the Khottadihi underground project has been examined as PW2. The Sub-Inspector of police, Indrajit Mondal who was at the relevant point of time posted in Pandabeswar P.S. where the un-natural death was reported and registered as Pandabeswar P.S. UD case No. 3 of 2018 on the date of death itself i.e. 06.02.2018, has also been examined as P.W.3.
13. P.W.2, Manager of the Colliery where the incident is set to have occurred, in his statement has stated in unequivocal terms that on the fateful day the employee was performing his duty in the 1st Shift underground, at the Colliery. He has also admitted that he was found dead underground approximately 1000 meter away from the work place. Existence of the agreement dated 06.02.2018 (Exhibit-3) and the fact that he was a signatory to the said agreement has also not been denied. During his cross-examination P.W. 2 has also stated about the nature of duty of the deceased that it involved operating the machine underground in the Colliery.
14. The learned Counsel for the respondent has submitted that the present appellants, before the Commissioner have resorted to suppression of a

relevant and material fact, while filing written statement regarding existence of the agreement dated 06.02.2018. It is submitted that the suppression is with an intention to overcome the second proviso to Section 30 of the Employees' Compensation Act. which reads as follows:-

"30. Appeals.—(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely—

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under Section 4-A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased [employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than [ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify]:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the

decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties: (emphasis ours)

[Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days."

15. In view of the second proviso to Section 30, it is clear that the present appeal does not lie before this Court against the order passed by the Commissioner, as the Commissioner's decision is only for enforcing the agreement dated 06.02.2018 arrived at between the parties which clearly contemplates that the compensation was to be submitted to the Commissioner within a month from submission of the post-mortem report.
16. The stand of the appellants that the payment of compensation was contingent upon verification of the cause of death so as to ascertain whether death had occurred in course of and arising out of the employment, is an afterthought.
17. Plain reading of the agreement dated 06.02.2018 shows that in fact it was the Union that demanded that an enquiry be conducted by the Eastern Coalfields Limited Safety Board into the cause of death of the employee. However, there was no agreement between the parties on this point.
18. The amount of compensation under the Employees' Compensation Act, as per agreement dated 06.02.2018 was to be submitted to the Commissioner within one month after the post-

mortem report. No enquiry into the cause of death was contemplated as per agreement dated 06.02.2018. As per agreement dated 06.02.2018 the appellant was required to make payment of the amount of compensation due under the Act.

19. In view of these facts on record which have been taken note of by the Commissioner, it is submitted that appeal is not maintainable as the present case is covered by the second proviso to Section 30 of the Act.

20. Upon consideration of the rival submissions and on going through the records, we find that it is not in dispute that the husband of the respondent was an employee of the appellant. It is also not in dispute that the death of the claimant husband has occurred while the employee was performing his duty in the first shift, underground at the Colliery, where he was found approximately 1000 meters away from the workplace. These facts have been sustained with reference to evidence in the proceedings, being the deposition of the Manager (P.W.2) as also the agreement dated 06.02.2018 (Exhibit-3), duly signed by P.W.2 on behalf of the appellant.

21. In so far as the dispute being raised on behalf of the appellant that the death did not occur in connection with the duties being performed by the deceased, we find the same to be clearly unsustainable. In this regard, reliance has been placed by the learned Commissioner on Exhibit 4 and 8 being the post-mortem and enquiry report submitted by the police, respectively. The cause of death has been found to be massive myocardial infraction which in plain term means a massive heart attack. The

finding that such death can be attributed to be in connection with duties being performed by a workman has been based by the Commissioner on decision of the Apex Court in the case of ***Subhadra Bai And Ors. vs Maharashtra State Road Transport*** reported in ***(2003) 2 LJSOFT 83*** as well as decision of the Apex Court in the case of ***Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Anr.*** reported in ***(2007)11 SCC 668*** wherein the Apex Court has considered that death by heart attack while on duty, in view of the nature of strenuous work being performed, as in the instant case may bear a casual connection with the duties being performed by the workman.

22. In the present case, we find that on the date of death of the employee i.e. on 06.02.2018, itself the employer agreed to deposit the amount of compensation under the Act within a month of the post-mortem report.

23. The specific demand of the union to enquire into the cause of death in fact was not acceded to by the management. The payment of compensation was made contingent only upon submission of post-mortem report. We, therefore, do not consider it appropriate that the appellant should be allowed to raise such a dispute now at this belated stage in the appeal, more so in view of the fact that the management itself has agreed to make payment of the same within a month of the post-mortem.

24. In view of the above discussions, we find that the appellant has failed to make out any case for interfering with the order passed by the Commissioner.

25. Having considered the issue as per discussions

above we advert to the nature and scope of the Act under which the compensation is claimed. The Act is a piece of beneficial legislation. The aim and object of the same is to provide social security to employees. This being the underlying objective of the Act, we are conscious that we are also required to take a view which furthers the scope and object of the Act. Viewed from such perspective, keeping in background the fact that no case has been made out by the appellants for interference with the order of the Commissioner the appeal and pending applications deserves to be, and is hereby dismissed.

26. The respondent is thus entitled to the compensation in terms of the order passed by the Commissioner, Employees' Compensation, Durgapur under the judgment dated 27.06.2022 passed in claim case no. 20 of 2019, in accordance with law.

(Madhuresh Prasad, J.)

(Supratim Bhattacharjee, J)