Workmen’s Compensation Act, 1923, S. 3(5) – Remedies open to an injured workman or the Legal Representatives of a deceased workman under the Workmen’s Compensation Act, 1923 or before a Civil Court are in the alternative. [PLRonline 213901]

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2006 PLRonline 0102

Delhi High Court

Bench: T Thakur, S Bhayana

United Technical Consultants Pvt. Ltd. v. Smt. Shanti Devi

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10]

Judgment

T.S Thakur, J.— This is a defendant's appeal arising out of a suit for payment of compensation in connection with the death of a workman while in the employment of the defendant appellant. The Court below has, while partly allowing the claim made by the legal representatives of the deceased workman, held them entitled to a sum of Rs. 2,99,520/- with interest @ 9% per annum w.e.f January, 1987 till realization.

2. Late Sh. Mohru Lal was employed by the appellant company as a helper and dispatched to serve at one of its projects in Libya for a period of two years. The terms and conditions of his employment were incorporated in an agreement executed between the parties. While in Libya, Mohru Lal met with an accident on 23rd November, 1983 in the course of his employment resulting in grievous injuries to which he eventually succumbed on 5th June, 1984. His widow and minor children who happen to be the respondents in this appeal filed a suit for payment of a sum of Rs. 6 lacs towards compensation for the death of the deceased. Their case in the plaint was that the deceased was at the time of the accident aged above 35 years and was earning Rs. 4,000/- per month on an average towards salary including over time wages. An amount of Rs. 6 lacs was on that basis claimed towards compensation.

3. In the written statement, the defendants alleged that the deceased had slipped his foot and fallen from a height of about 6 metres at the work site resulting in injuries to him for which he was treated in a hospital where he eventually died. The defendant further alleged that had the deceased observed all the safety precautions, the accident could have been avoided. According to the defendant, its employees of the defendant were covered under the Insurance and Health Scheme of the Libyan Government, including Mohru Lal-the deceased. Under the scheme, the legal representatives left behind by the deceased were entitled to a monthly pension from the Libyan Government. A case for payment of benefits under the scheme was, according to them, prepared but turned down on the ground that the families of the employee must be present in Libya in order to avail of any such relief. The defendant alleged that it had thereafter shown its readiness and willingness to tender compensation equivalent to that computed/determined under the Indian Workmen's Compensation Act, 1923. The plaintiffs however responded by filing a suit for damages in a sum of Rs. 6,05,550/- as they were not agreeable to accept the offer made by the defendant. It was also alleged that the monthly wages of the deceased was about Rs. 1,560/- and not Rs. 4,000/- as alleged by the plaintiff. The appellant company alleged that it had paid Rs. 550/- per month to the legal representatives of the deceased between July 1984 and December 1985 apart from transporting the body of the deceased from Libya to India at its expense. The allegation that the plaintiffs were helpless and indigent persons, unable to pay Court fee was denied and the suit dubbed as frivolous hence liable to be dismissed.

4. On the pleadings of the parties, the trial Court framed the following three issues:

(i) Does this Court have no territorial jurisdiction to try the present suit?OPD

(ii) Are the plaintiffs entitled to compensation as claimed in the suit? If so, what amount?OPP

(iii) Relief.

5. By the judgment impugned in this appeal, the trial Court found issue No. 1 against the defendant. The Court held that since the appellant company had its head office at Delhi and the contract of service was entered at Delhi, the Courts in Delhi were competent to entertain the suit. The Court, in this connection, relied upon the statement of Sh. Bishambar Nath that the defendant company was registered with the Registrar of Companies at Delhi with its registered office at S-6, Community Centre, Saket, New Delhi.

6. Insofar as issue No. 2 was concerned, the trial Court was of the view that a suit for payment of

compensation was maintainable before a Civil Court. Reliance in support was placed upon the decision of the Kerala High Court in Minerals and Chemicals v. Thevan, 1992 ACJ 230. The Court also found that the agreement between the parties stipulated an amount of Rs. 1,560/- per month only towards salary and since the plaintiff had failed to prove that the deceased was working overtime to supplement that income, the same had to be taken to be Rs. 1,560/- only. The Court then relied upon the decision of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas, (1994) 2 SCC 176 : AIR 1994 SC 1631, Smt. Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179 : AIR 1996 SC 1274; and Donat Louis Machada v. L. Ravindra, VI (2000) SLT 571, and held that future prospects of the deceased for earning a higher amount had to be taken into consideration while determining the amount of compensation payable to the claimants. The Court, on that basis, adopted the formula given in Sarla Dixit's case (supra) and determined the gross income of the deceased to be Rs. 2,340/- out of which 1/3rd was deducted towards his personal expenses leaving the balance amount of Rs. 1,560/- as his contribution to the family. Applying a multiplier of 16, the Court awarded a sum of Rs. 2,99,520/- to the plaintiffs towards compensation with interest @ 9% p.a as already mentioned above.

7. Appearing for the appellant company Mr. Kailash Vasdev made a two-fold submission before us. Firstly he contended that the plaintiffs could not have approached a Civil Court for compensation. Their only option, according to the learned Counsel, was to file a claim before the Commissioner under the Workmen's Compensation Act, 1923. The impugned judgment and decree were on that short ground, argued the learned Counsel, liable to be set aside. The decision of the Kerala High Court in Minerals and Chemicals v. Thevan (supra) was distinguishable, according to Mr. Vasdev.

8. Section 3 of the Workmen's Compensation Act, 1923 deals with employer's liability for compensation. Sub-section 5 to Section 3 is for purposes of the contention urged before us, relevant and may therefore be extracted.

“Sec. 3.(1)xxxxxxxxx

(1) xxxxxxxxx

(2) xxxxxxxxx

(3) xxxxxxxxx

(4) xxxxxxxxx

“(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

9. A careful reading of the above would show that the remedies open to an injured workman or the Legal Representatives of a deceased workman under the Workmen's Compensation Act, 1923 or before a Civil Court are in the alternative. If the injured workman or the legal representatives of a deceased workman have already filed a suit before a Civil Court claiming damages for the injury or death as the case may be, no claim for payment of compensation would lie before the Commissioner under the Act. Similarly, no suit for damages would lie in respect of any injury where the injured has instituted a claim before the Commissioner under the

Act or where the parties have arrived at an agreement providing for payment of compensation in accordance with the provisions of the Act.

10. What is important is that neither Section 3 nor any other provision of the Act excludes in specific terms the jurisdiction of a Civil Court to entertain a claim for payment of compensation. No such exclusion can even be implied in the face of Section 3(5) which recognizes the right of a workmen to approach a Civil Court for damages for an injury against his employer or any other person.

11. Mr. Vasdev, however, relied upon Clause (b) to Section 3(5) and argued that the present case fell within the four corners of that provision inasmuch as there was an employment agreement between the deceased and the appellant company according to which compensation could be claimed as per the provisions of the Workmen's Compensation Act, 1923. He submitted that so long as the said stipulation existed in the employment agreement as a condition of service, the Civil Court's jurisdiction to entertain a suit for compensation under the general law would stand excluded.

12. Clause 13 of the agreement executed between the appellant company and the deceased is as under:

“Compensation in case of accident or disability from injury out of and sustained by the employee in the course of his employment shall be determined and paid according to the local labour laws and in the absence of any such law, according to the Indian Workmen's Compensation Ac currently in vogue.”

13. All that the above clause provides is for payment of compensation according to the local labour laws in Libya and in the absence of any such law according to the Indian Workmen's Compensation Act currently in vogue. Section 15B of the Workmen's Compensation Act, 1923, however, applies the provisions of the Act even to such workmen as are recruited by companies registered in India but are employed to do work outside the country. Clause 13 of the agreement extracted above, in that view, does not make any addition to what the law otherwise provides for, viz., that the workman including legal representatives of a deceased workman can claim compensation in terms of the machinery provided under the Workmen's Compensation Act, 1923 no matter the workman was working outside the country.

14. That apart Clause (b) to Section 3(5) of the Act, in our opinion, deals with a situation where the workmen and his employer have arrived at an agreement which provides for payment of compensation in respect of the injury in accordance with the provisions of the Act. The provision is not very happily worded insofar as it uses the expression ‘if an agreement has been come to between the workmen and his employer'. There is an obvious grammatical error in that expression but even if one were to ignore that error, all that the same is meant to convey is that the workmen and employer have mutually agreed for payment of compensation in respect of the injury in accordance with the provisions of the Act. Any such agreement must, in our opinion, be an agreement post accident and must be one that settles the claim for payment of compensation in accordance with the provisions of the Act. It is only when such an agreement is arrived at between the workman and his employer that no suit for damages arising out of any injury may be maintained in a Civil Court. The object underlying Section 3(5)(b) appears to be to prevent litigation post-settlement of the claim provided the settlement ensures a compensation which is otherwise payable under the provisions of the Act. The clause has no role to play in cases where there is no such settlement between the parties and the question as to what amount is payable is still at large as was the position in the instant case.

15. The plaintiff had no doubt made a claim for payment of compensation but nothing concrete was offered by the appellant in satisfaction of the said claim. There was in that view no agreement which could possibly keep any claim for damages outside the jurisdiction of a Civil Court. Any other interpretation would in our view render the provisions of Sub-section 5 of Section 3 otiose. The decision in Thevan's case (supra) and that in Port Trust, Madras v. Bombay Co. (P) Ltd., AIR 1967 Madras 318 do not in our view state the law differently and was rightly relied upon by the Court below.

16. It was next argued by Mr. Vasdev that if a suit was indeed maintainable before a Civil Court, the plaintiffs had to prove the negligence of the employer which proof was, in the instant case, absent according to the learned Counsel. On behalf of the respondents, it was per contra argued that the accident had taken place in Libya and all facts relating to the manner in which the same had occurred were within the exclusive knowledge of the defendant appellant. It was further submitted that although the appellant is alleged to have conducted an inquiry and prepared a report regarding the cause of the accident, no such report was ever produced. Not even the report of the investigating agency was placed on record which too was within the knowledge of the defendant appellant. Reliance was also placed upon the doctrine of res ipsa loquitur and decision of the Supreme Court in Municipal Corporation Of Delhi v. Subhagwanti & Others, 1966 3 SCR 649 and Pushpabai Parshottam Udeshi v. Ranjit Ginning and Pressing Co. Pvt. Ltd., (1977) 2 SCC 745 : AIR 1977 SC 1735.

17. There is considerable merit in the submission made on behalf of the plaintiff respondents. The hapless widow and minor children of a workman who goes to a foreign land in search of livelihood can hardly have access to facts that are necessary to prove negligence resulting in the accident. It is true that the initial on us to prove negligence will be upon the claimant but it is equally true that in cases where the defendant has in his possession the best evidence that would throw light on a particular aspect in controversy, it is bound to produce the same before the Court to enable it to take a just and fair view of the matter. Non-production of the best evidence in possession of a party would give rise to an adverse inference against him. Reference may in this connection be made to the decision of the Supreme Court in Gopal Krishnaji Ketkar v. Mohamed Haji Latif & Others , AIR 1968 SC 1413, where the Apex Court declared that if a party, in possession of evidence which could throw light on a controversy, withholds the same, the Court must draw an adverse inference against him even if the onus of proof did not lie on him. The Court observed:

"Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."

18. It is also useful to refer to the observations made by the Privy Council in Murugesam Pillai v. Guana Sambandha Pandara Sannadhi, AIR 1917 PC 6 in this regard. The Court observed:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough—they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordship's opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

19. To the same effect are the decisions of this Court in Bansidhar Ganga Pershad Agency v. Chanan Lal, ILR (1975) I Delhi 445 and Hari Kumar v. Sat Narain Mehra, 1996 (36) DRJ 96.

20. Let us apply the above test to the case at hand. It is common ground that the accident had taken place in a foreign land. The widow and the minor children of the workmen had no possible access to either the place of accident or the proof of circumstances in which the same had taken place. The appellant company which has tremendous resources and which, according to the learned Counsel, conducted an inquiry leading to the accident ought to have shared the conclusions of the inquiry officer with the Court if it were to argue that the accident was not a case involving the negligence of the company but had occurred because of the failure of the deceased to take the prescribed safety measures. No such report has, however, been produced. Not even the police report relating to the accident has been placed on record. Such being the position, the Court would be

justified in drawing an adverse inference against the appellant that if the best evidence which may have included the statement of the work supervisor in charge of the worksite had been produced the same would have gone against the appellant.

21. The allegation that the deceased had not taken adequate safety measures had no doubt been made in the written statement but the defendant had not indicated as to what safety measures had been prescribed and why was any departure from the same permitted by the person immediately supervising the work at site. The averment in the written statement in this regard remain blissfully vague. In the totality of these circumstances, we have no hesitation in rejecting the submission made on behalf of the appellant that there was no negligence on the part of the defendant appellant.

22. It was lastly submitted by learned Counsel for the appellant that the amount of compensation determined was on the higher side. We do not think so. The method adopted by the trial Court for determining the amount payable to the plaintiffs is legally unexceptionable having regard to the decision of the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (supra) and New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720. The said decisions authoritatively lay down that the multiplier method is the most accurate of all methods for determining the compensation payable for death or injury regardless whether the claim for such compensation is made under the motor vehicles act or under the Fatal Accidents Act. The trial Court has keeping in view the age of the deceased correctly chosen the multiplier of 16 and applied a multiplicand of Rs. 1560 × 12 per annum to the same.

23. There is no merit in this appeal which fails and is hereby dismissed with costs assessed at Rs. 5,000/-.

Appeal dismissed.

Tags: Accident, adverse inference, Children, conduct, Contract, def, employees compensation act s. 3(5), Employment, Evidence, Filing, FIR, Gm, insurance, Interest, Judgment, Jurisdiction, Minor, Motor Vehicles Act, Pension, Pleadings, Readiness, res ipsa loquitur, Service, Settlement, Suit for damages, Tender, Title, Will, Writ, Written Statement