Roshan Deen vs Preeti Lal on 2 November, 2001

Equivalent citations: AIR 2002 SUPREME COURT 33, 2001 AIR SCW 4577, 2002 LAB. I. C. 106, (2002) 1 JCR 316 (SC), 2002 (1) UJ (SC) 334, 2002 (1) UPLBEC 280, (2001) 10 JT 309 (SC), 2001 (4) LRI 1261, 2001 (7) SCALE 616, 2002 UJ(SC) 1 334, 2001 (10) JT 309, 2002 (1) SCC 100, 2002 LAB LR 71, (2001) 8 SUPREME 97, 2002 SCC (L&S) 97, (2001) 99 FJR 653, (2002) 92 FACLR 175, (2002) 1 LABLJ 465, (2002) 1 LAB LN 11, (2002) 2 MAD LW 223, (2002) 1 PAT LJR 160, (2002) 1 PUN LR 289, (2002) 2 SCT 106, (2002) 1 SERVLR 563, (2002) 1 TAC 526, (2002) 1 UPLBEC 280, (2002) 1 ANDHLD 18, (2001) 7 SCALE 616, (2002) 1 ACC 59, (2002) 1 ACJ 16, (2002) 1 CURLR 4

Bench: K.T. Thomas, S.N. Variava

CASE NO.:
Appeal (civil) 7421 of 2001

PETITIONER:
ROSHAN DEEN

Vs.

RESPONDENT:
PREETI LAL

DATE OF JUDGMENT: 02/11/2001

BENCH:
K.T. Thomas & S.N. Variava

JUDGMENT:

THOMAS, J.

Leave granted.

If the Judgment of the High Court, now under attack, is termed as wrong and untenable it is only a euphemistic characterisation. It really amounted to crippling the cause of justice of a crippled man. The powers of writ jurisdiction of the High Courts are basically intended to salvage causes of justice, but the High Court, in this case, has exercised such powers for over-turning justice which a lower

authority had granted to a devastatingly disabled person.

Roshan Deen, a young man of 25, made a claim on the respondent (who was running a Flour Mill-cum-Sugarcane Factory) for a sum of Rs.7 lakhs on the following factual averments: The claimant (present appellant) was a workman of the respondents industrial establishment, on a monthly salary of Rs.1500/-. On an ill-fated day in his life (4.3.1995) he was operating a machine of the Mill, but in a sudden tweak he got himself snapped in the shaft of a column and was crushed by the fast rotating machine and was ruinously injured. His neck, hands, legs etc. suffered multiple injuries including fractures. He was rushed to a private hospital and from there, to the Post Graduate Institute, Chandigarh. An emergency tracheotomy was performed to save his life as the endoscope revealed that his right vocal cord has been paralised, the trachea and other vessels of the neck were impaired. One of his legs and one of his hands were amputated besides very many other impairment suffered by him. Enough it is to say that he did not die of the injuries. If the description of the ravageous features of the consequences on his person as recorded in the medical papers produced by him are to be believed we can only bemoan that he survived to live a triturated life.

He filed a petition before the Commissioner for Workmens Compensation, Yamuna Nagar (Haryana) on 6.2.1997, claiming compensation of Rs.5 lakhs plus medical expenses of Rs.2 lakhs, in accordance with the provisions of the Workmens Compensation Act, 1923, (for short the Act).

The respondent in his written statement repudiated all the above averments including the very basic of the claim that appellant was a workman of his Mill. Respondent proceeded to state that no such accident as described by the appellant had happened nor had the appellant sustained any injury whatsoever.

While the claim petition was pending before the Commissioner for Workmens Compensation (for short the Commissioner) an application dated 12.3.1999 was filed in which it was stated, inter alia, that appellant and respondent had entered into an agreement with each other and, hence, the appellant did not want to pursue any claim against the respondent and, on the strength of the said agreement, requested the Commissioner to record the agreement. The application was purportedly signed by the respondent which signature was authenticated by an advocate. But there was no signature of the appellant on the application, instead a thumb impression was seen affixed which was identified by Advocate R. Singh. On 19.3.1999, the Commissioner passed the following order:

> Today, the case is fixed for R/E. None is present on behalf of the applicant. The respondent stated that both parties had arrived at an agreement, therefore, nobody would come on behalf of the applicant. He had also submitted a written agreement deed on dated 12.3.1999, the applicant and his counsel had been also present at that time. In this situation, accepting agreement deed to be correct, claim of the applicant is dismissed as settled/withdrawn.
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> On 16.4.1999, appellant filed a petition before the Commissioner praying for recalling the above quoted order. He stated in the said petition that on 12.3.1999, his advocate (Shri Rajpal Panwar, Advocate, Jagadhri) obtained his thumb impression on a

certain document the contents of which were not disclosed to him and after paying him Rs.9,500/- the advocate told him that it was given pursuant to a decision rendered by the Commissioner; and he was asked to go to the office of the advocate again after 15 days. Appellant further stated in the said petition that when he went to the office of the advocate after 15 days, as required by him, the advocate refused to go with the appellant to the Commissioner. When he made enquiries about his case he came to know of the order dated 19.3.1999. Immediately he felt that a fraud had been played on him.

The Commissioner called upon the respondent to give his reply to the allegations made in the petition filed by the appellant for recalling the order. Respondent in his reply disclaimed having paid any amount to appellant and even disowned the minuted fact that he made the statement in the court that an agreement was arrived at. He asserted that appellant had withdrawn his claim on his own. He reiterated that appellant was never employed by him and denied having played any fraud on him, but he forcefully opposed the prayer for recalling the order.

The Commissioner thereupon passed an order on 11.10.1999, after referring to Section 17 of the Act which declares any agreement (by which a workman relinquishes any right to get compensation from the employer for personal injury) as null and void. The operative portion of the order so passed by the Commissioner reads thus:

In view of Section 17 of the Act read with Section 151 of the CPC, I set aside order dated 19.3.99 in the interest of justice so that the claim case could be decided on merits. Since the respondent has denied that any payment has been made to the applicant on 12.3.99 no suffering shall be caused to him by this order. The case to come up for evidence of the respondent on 19.11.99. No costs. The parties be informed accordingly.

Respondent challenged the said order before the High Court under Article 227 of the Constitution and a copy of the order passed by the Commissioner on 19.3.1999 was appended with the writ petition as Annexure-P1. In the said writ petition respondent did not concede that he paid Rs.9,500/-. Still he opposed the prayer for recalling the order dated 19.3.1999. Learned single Judge of the High Court, despite his attention being drawn to Section 17 of the Act, went to the extent of observing that no fraud was played on the appellant. The reasoning of the learned single Judge (R.L. Anand, J) for upsetting the order of the Commissioner, by which the earlier order was recalled, is the following:

A reference to Annexure-P1 would show that a joint application was moved by Roshan Deen and the present petitioner Preeti Lal. It was in the shape of a compromise in which it was submitted by the parties that since they have compromised with each other, therefore, Roshan Deen applicant does not want to pursue his case and withdraw the same. Of course, it was written in the said

application Annexure-P1 that the said compromise be also taken on record. In view of the clear intention on the part of Roshan Deen that he did not want to pursue his case and withdraw the same, no other order was required. The application for recalling the order dated 16.4.1999 was moved after a period of about 27 days. It is not established on record that Roshan Deen ever gave a notice to his counsel that he never gave instructions to him for the purpose of entering into a compromise. Even in the review application Roshan Deen does not say that the thumb impression on the original of Annexure-P1 is not his. In these circumstances, I am of the opinion that no fraud has been practised upon the Court. Rather, the intention of Roshan Deen became bad subsequently and he wanted to withdraw from his compromise which is not permissible.

The only consolation provided by the learned single Judge to the crippled human being was that Roshan Deen may adopt other legal remedy under law against the order dated 19.3.99 and did not mulct him with costs. What is the other remedy which the appellant could adopt is not even indicated by the learned single Judge, and we are unaware of any other possible legal remedy which could even be contemplated by the appellant. The legislative protection conferred on an injured workman as per Section 17 of the Act, or the decision of this Court in United India Insurance Co. Ltd. vs. Rajendra Singh and ors. {2000(3) SCC 581} which were brought to the notice of the learned single Judge, did not make any impact on him. He sidelined the legislative mandate and bypassed the binding decision and proceeded to overturn the correct decision rendered by the Commissioner. Thus, the hands of the High Court had snatched away the solace provided by the Commissioner to a semi-handless and semi-legless person.

We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. {vide State of Uttar Pradesh vs. District Judge, Unnao and ors. (AIR 1984 SC 1401)}. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the byproduct of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

Here, look at the fall out of the impugned order. The High Court permitted the revival of an absolutely unjust order, both on facts and on law, which deprived a person of his legitimate right to have his claim decided in accordance with the provisions of the statute. A reading of Section 17 of the Act would amplify the above position. It reads thus:

Contracting out. - Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the 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.

In this context it is necessary to point out that Section 28 of the Act contains a provision for registration of agreements. Even the said provision shows that an agreement should be for disbursement of the amount payable as compensation and if any such agreement is arrived at, the section requires that a memorandum thereof shall be sent by the employer to the Commissioner who shall record the memorandum in a register in the prescribed manner. One of the clauses in the proviso indicates that if it appears to the Commissioner that an agreement 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, the Commissioner has the power to refuse to record the memorandum of the agreement. Section 29 contains a mandate that if the memorandum of any agreement is not sent to the Commissioner, as required by the preceding 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.

Section 4 of the Act gives specifications how to quantify the amount of compensation payable to the workmen. Clause (b) of sub-section (1) thereof says: where permanent total disablement results from the injury, an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor shall be the amount of compensation. What is meant by relevant factor in relation to a workman is defined in Explanation I to the said section. It means the factor specified in the second column of Schedule IV. If the age of the claimant is as stated by him in the application, the relevant factor would be a figure nearing 217. We mentioned the above aspect only for indicating that if the claim of the appellant is to be granted he would have been benefited by an enormous amount of compensation when compared with the paltry pelf which his advocate has paid to him through fraud or deceitful means.

In the light of the above provisions of the Act the High Court could have, without any strain, gauged the magnitude of the injustice inflicted on the claimant if the order of the Commissioner dated 19.3.1999 remained unchanged. Had the Commissioner refused to recall the said order, would the High Court have refused to interfere, if the claimant moved the High Court under Article 227 of the Constitution challenging the said order? It does not require much reasoning that the answer to that question could only be in the negative. If so, learned single Judge of the High Court had facilitated miscarriage of justice to be occasioned by restoring an order passed by the Commissioner on 19.3.1999, which is ex-facie illegal apart from being unjust and inequitable. Even on the fact situation the High Court could not have revived the said

> order because it had recorded that it was the respondent who represented before the Commissioner that both parties had arrived at an agreement. We may point out that the very respondent himself in his reply to the application for restoration of the claim petition had disowned having made any such statement before the Commissioner.
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> It was thus explicitly clear that the agreement reported before the Commissioner which led to the order dated 19.3.1999 had burgeoned in fraud. It got crystallised and a chicanery was played on the Commissioner who was misled to believe that appellant and respondent had entered into an agreement. It is surprising how learned single Judge missed the factual position that there was no dispute between the parties, when the application for recall of the order dated 19.3.1999 was considered, that an artifice was disported in the court at least by somebody in the name of the respondent. This is clear when respondent himself disowned having stated before the Commissioner that an agreement was reached.
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> We may again extract the relevant portion of the order dated 19.3.1999. The respondent stated that both parties have arrived at an agreement, therefore, nobody would come on behalf of the applicant. When the appellant submitted before the Commissioner on 16.4.1999 when he requested for recalling the said order that no such agreement had been arrived at, the Commissioner without difficulty noticed that respondent also submitted to the Commissioner that he did not make any such statement before the Commissioner on 19.3.1999. The whole deliberations before the Commissioner on 19.3.1999 smack of a fraud of a superlative degree played on the Commissioner.

Learned single Judge seems to have entertained a notion that once a Commissioner happened to pass an order, however illegal, unjust or inequitable it be, or even if the Commissioner was convinced that the order was wangled from him by playing a fraud on him he would be helpless and the parties thereto would also be helpless except to succumb to such fraud. It was in this context that the decision cited before the learned single Judge of the High Court required consideration by him. In United India Insurance Co. Ltd. vs. Rajendra Singh and ors. (supra) this Court had held thus:

> Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.
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> We cannot allow the order of the Commissioner dated 19.3.199 to remain alive even for a moment. It is the byproduct of fraud and cheating. We, therefore, set aside the impugned judgment and restore the order passed by the Commissioner on 11.10.1999. As already a long period of six years has been wasted we direct the Commissioner to expedite the proceedings and dispose of the claim without any further delay.

Before disposing of this appeal we deem it necessary to make one more direction which, in our opinion, is required for completion of the even course of justice. The Bar Council of the State of Haryana should hold an inquiry into the allegations made by the petitioner against the advocate Rajpal Panwar of Jagadhri as to whether he had played a chicanery to defraud the petitioner by obtaining his thumb impression and paying Rs.9,500/-. We restrain ourselves from making any observation on the merits of the allegations made against the aforesaid advocate. We direct the Registry of this Court to forward a copy of this judgment to the Secretary of the Bar Council of the Haryana. This is to enable the said Bar Council to adopt such steps as they deem fit and necessary for disposal of the disciplinary proceedings as against the said Rajpal Panwar, Advocate, Jagadhri.

J [K.T. Thomas] J [S.N. Variava] November 2, 2001.