

Smt. Saroj vs M/S Balaji Transport Company And Ors on 15 December, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

Digitally Signed By:DEVANSHU
JOSHI
Signing Date:17.12.2021 13:23:

\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2683/2020

SMT. SAROJ

..... Petitioner

Through: Mr. S.A. Rajput, Advocate
(M: 9891337341)

versus

M/S BALAJI TRANSPORT COMPANY AND ORS..... Respondents

Through: Mr. Tanvir Khan, Advocate for R-1 &
2 (M: 9810755422)

Mr. Pankaj Seth, Advocate for R-3
(M: 9013445525)

CORAM:

JUSTICE PRATHIBA M. SINGH
ORDER

% 15.12.2021

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition has been filed by the wife of the deceased employee seeking directions for enforcement of compensation Award dated 14th July, 2017 by which compensation of Rs. 9,58,576/- has been awarded to the Petitioner and the other claimants.

3. Notice was issued in this matter on 11th March 2020, on which date, Respondent No. 2, i.e., the Director of Respondent No. 1, was directed to remain present in Court on the next date of hearing. Due to uncertainty on the part of the Petitioner as to whether the Respondents had been served, fresh notice was directed to be issued on 24th February 2021. On the next date of hearing i.e., 9th April 2021, Respondent No. 2 was present in court, however the matter was adjourned due to technical issues being faced by the Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 Petitioner. Thereafter, on 7th July 2021, none appeared for the Petitioner or Respondent Nos. 1 and 2. Even on the next date i.e., 28th September 2021, none appeared for Respondent No.1

and 2, despite service. Accordingly, bailable warrants were issued against the Respondent No. 2, and the Petitioner was given the liberty to execute the Award in her favour. On 5th October 2021 as well, bailable warrants were directed to be issued to Respondent No.2- Mr. Ashish Goel for a sum of Rs.10,000/-.

4. Today, the employer - Respondents No.1 & 2 have entered appearance, and Respondent No.2 is also present in person.

5. After hearing some submissions, it is noticed by this Court that there is a peculiar situation in the present case. The Petitioner's husband was a cleaner/helper who was employed on the vehicle of the Management - Respondent No.1 & 2. He unfortunately passed away on 24th October 2015, due to burn injuries from an electric shock that he suffered.

6. After the said incident, the wife of the deceased, i.e., the Petitioner, filed a claim under the Employees Compensation Act, 1923 (hereinafter, "Act"), against the Respondent No. 1- Management, as well as against the Respondent No. 3- Insurance company. Initially, before the Commissioner under the Act, a settlement was entered into between the claimants and the insurance company, on 16th December, 2016, by which the insurance company agreed to pay a sum of Rs. 8,13,240/-. However, curiously, the Claimants sought reopening of the matter and thereafter evidence was led, and finally a sum of Rs. 9,58,576/- was awarded against the Management- Respondent No.1. In the said proceedings, as is visible from paragraph 13 of the Award, the Respondent No. 3- Insurance Company tried to resile from Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 its responsibility of paying the claimant, by arguing that the employer has not admitted that the deceased was his employee. Although initially, the Insurance Company had agreed for the settlement and to pay the sum in respect thereof, curiously when the matter was reopened by the Claimant, they completely resiled from this obligation. Thus, the compensation Award has been passed completely against the Management- Respondent No.1.

7. Ld. Counsel for the Claimant points out that in the written statement filed by Respondent No.1, the deceased is clearly admitted to be a casual/daily wageer of the Management.

8. Ld. Counsel for Respondents Nos.1 & 2 submits that they have filed an application under Order 9 Rule 13 CPC, for setting aside the Award of compensation.

9. In any case, it is noticed by this Court, that the said Award dates back to 2017, however, the family of the deceased has not received a single penny yet.

10. The Employees Compensation Act is a social beneficial legislation and is to be liberally construed. The intent of the statute is to grant expeditious compensation in the event of accidents taking place, in favour of the victim employee's dependent members. The Court ought to avoid a hyper technical interpretation of the provisions of the statute which would delay the payment of compensation. This has been recognised by a Ld. Single Judge of this Court in *Brijesh Kumar Verma v. Aurangjeb and Ors.*, 246(2018) DLT 1431, wherein it was held:

1 Upheld by the Supreme Court, to the extent of the interpretation of the Employees Compensation Act, 1923 in SLP(C) No. 14554/2018 titled Brijesh Kumar Verma v. Md. Aurangjeb and Anr. (Order dated 11th May 2018) Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 "21. The object for enacting the Employees' Compensation Act even as early as 1923 was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. Section 12 safeguards the right to compensation when the employer delegates the work to another person. Section 12 is intended to secure to an employee the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against the person who had employed such contractor to execute the work. The Act refers to him as the principal. The main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged by the principal employer through a contractor for the work which the principal employer is supposed to carry out. If a person substitutes another for himself to do his work, he ought not to escape the liability which would have been imposed upon him, if he had done it himself. The intention of the Legislature in enacting Section 12 provision appears to be that the injured employee or the dependent of a deceased employee who has been awarded compensation by the Commissioner, should not be put to any difficulty in realising such amount of compensation on account of any recalcitrance of the employer or on account of the vicissitudes of his (the employer's) financial position.

The Employees' Compensation Act, 1923 is a piece of social beneficial legislation and its provisions have to be interpreted in a manner so as not to deprive the employees of the benefit of the legislation. xxx

32. Rules of Interpretation of Social welfare legislations Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 32.1. The principles of statutory construction are well settled that the words occurring in statutes of liberal import such as social welfare legislation and 'Human Rights' legislation are not to be put in procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions but to advance the intent.

32.2. It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.

32.3. It is trite law that the safe guidance for interpreting any provision in a statute or for understanding the scope and meaning of a particular word in provision, is to ascertain the intention of the legislature. However wide in the abstract, general words and phrases are more or less elastic and admit of restriction or extension to suit the legislative intention. The object of the legislation would afford answer to the problems arising from ambiguities which it contains.

32.4. Purpose of Employee's Compensation Act, 1923 In N.P. Lalan v. V.A. John, (1972) II LL J 273 Ker, V.R. Krishna Iyer, J. as he then was, explained the Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 purpose of Employee's Compensation Act in the following words:-

" 4. The Act with which I am concerned relates to workers, and the entire purpose of the statute is to see that the weaker section of the community, namely, the working class, is not caught in the meshes of litigation which involves a protracted course of appeal. That is why the statute creates a special Tribunal and provides only for a restricted appeal

xxx xxx xxx Part IV of the Indian Constitution serves as a perspective while construing the Workmen's Compensation Act. May be that pre-

Constitution statutes were interpreted in a particular way by Courts on certain assumptions of the State's functions at that time. Today it is absolutely plain that the Directive Principles of State Policy, though not enforceable by a Court, are nevertheless fundamental in the governance of the country, and must inform the judicial mind when interpreting statutes calculated to promote the welfare of the working class. In fact, Article 42 enjoins upon the State to make provision for securing just and humane conditions of work and Article 43 compels the State to endeavour to secure, by suitable legislation, to all workers conditions of work ensuring a decent standard of life. Indeed, the spirit of Part IV of the Constitution must colour the semantic exercises of the judiciary when applying the provisions of the Workmen's Compensation Act. If that be the approach to be made, I am clear in my mind that the argument that the proviso to Section Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 30 has been interpreted liberally in the pre- Constitution days is of no significance. The same words, with socio-economic developments in society, acquire a new emphasis in tune with the changed conditions. It is clear therefore, that the dynamics of legal interpretation based on social changes which have taken place in the nation's life and goals demand " .. "

11. Admittedly the vehicle was insured with the Insurance Company. The Insurance Company had earlier, voluntarily entered into a settlement with the family of the deceased. The Employer claims that he paid a sum of Rs. 2 lakhs and also paid for the funeral expenses etc., of the deceased. Admittedly, the Employer was not heard prior to the passing of the final Award. The case of the Employer is that no notice was given to them by the Commissioner, when the matter was reopened and the Employer continued to remain under the impression that the matter stood settled between

the victim's family and the Insurance Company. In order to render substantial justice to the family, at this stage, the following directions are issued:

- i) The Respondents No.1 & 2 shall pay a sum of Rs. 2 lakhs to the Petitioner's family within a period of six weeks.
- ii) The Respondent No. 3- Insurance Company shall also pay a sum of Rs. 2 Lakhs to the Petitioner's family.
- iii) The said payments shall be subject to further orders passed by this Court in the present petition, and shall be without prejudice to the rights and contentions of the parties.

12. Counter affidavit on behalf of Respondent No. 3- Insurance Company, is already on record. Let counter affidavit on behalf of Digitally Signed By:DEVANSHU JOSHI Signing Date:17.12.2021 13:23:15 Respondent Nos.1 & 2 be filed within six weeks. Rejoinders thereto, be filed within four weeks thereafter.

13. The documentary evidence showing the payment of Rs. 2 lakhs be filed with the counter affidavit in this petition.

14. List before the Registrar on 23rd December, 2021 in order to ascertain the identity of the family of the deceased/Petitioner as well as the bank account to which the amounts, in terms of this order, is to be released. The Registrar to verify the same and to pass appropriate orders after identifying the name of the beneficiary and the bank account to which the monies are to be released.

15. List for hearing before the Court on 12th April, 2022.

PRATHIBA M. SINGH, J.

DECEMBER 15, 2021 mw/AK