Madras High Court
Srikanth vs G.R. Ebinezer on 20 February, 2001
Equivalent citations: 2003 ACJ 1239, (2001) IILLJ 1307 Mad, (2001) 2 MLJ 646
Author: V Bakthavatsallu
Bench: V Bakthavatsalu
JUDGMENT V. Bakthavatsallu, J.

1. The respondent in the workman compensation case is the appellant herein. The respondent herein filed an application for compensation.

2. The case of the petitioner is as follows:

The petitioner was working as a machine operator under the respondent for the past two years on a monthly wages of Rs. 750. On December 30, 1989, at about 7.30 p.m., while the petitioner was feeding materials in the reprocessing machine, the right hand was trapped into the machine, as a result of which he sustained grievous injuries. Due to the above accident, the petitioner sustained crush amputation of right index finger and right middle finger. The petitioner was treated as an outpatient at the Government Hospital, Madras and subsequently, he took treatment at a clinic in Porur. The expenses incurred at the above clinic was barred by the respondent. The surgeon has assessed the disability as 20%. The petitioner is entitled to a sum of Rs. 25,000 as compensation.

3. The case of the respondent is as follows:

The allegation that the petitioner was working as a machine, operator is denied. The petitioner was a helper. The allegation that the petitioner was paid monthly wages of Rs. 750 is denied. It is true that on December 30, 1989, the petitioner was involved in the accident in the reprocessing machine. But, it is denied that the applicant was working as per the instructions of the respondent. The petitioner ignored the instructions of the respondent and fed the machine from the wrong side without following the instructions. Due to the failure to follow the instructions and due to carelessness of the petitioner, the accident took place and therefore, the respondent is not liable for the accident. The respondent dispute the disability as 20%.

4. Before the Commissioner for Workmen's Compensation, Madras, the petitioner examined himself as a witness. On a consideration of the evidence, the learned Commissioner has held that the petitioner sustained disability to the extent of 20% and accordingly, he has determined the compensation at Rs. 8,611. Aggrieved by the said award, the owner of the factory has come forward with this appeal.

5. The appellant has raised the following contentions in this appeal:

The Commissioner has committed error in holding that there was no negligence on the part pf the petitioner especially when the petitioner himself admits his negligence. The Commissioner failed to note that the petitioner was doing the same job after the accident and therefore, the Commissioner ought to have held that there was no loss of earning capacity. It is only the petitioner's wilful

disobedience and negligence that brought about the calamity to himself. The calculation of compensation by the Commissioner is not correct.

6. The following substantial questions of law are formulated in this appeal:

(1) Whether the Commissioner for Workmen's Compensation is right in passing the order when evidence that was placed before him show that there was negligence on the part of the claimant and disobedience of the instruction of the appellant?

(2) Whether the Commissioner is right in awarding the compensation disregarding the principles of law and on irrelevant grounds when negligence is proved?

(3) Whether the Commissioner is right in awarding the compensation, when it was proved that the respondent did not suffer any loss of earning capacity because of the accident and continued to perform all the work done by him prior to the accident?

7. Substantial questions of law Nos. 1 and 2:

There is no dispute that in the accident occurred on December 30, 1989 in the respondent's factory, the petitioner sustained injuries. There is also no dispute that the petitioner is the employee of the respondent. The respondent in the O.P. who is the appellant herein is the proprietor of the factory. Learned counsel for the appellant contended that as the findings of the Commissioner on several aspects of the case are vitiated by grave infirmities, this appeal has been filed. On the other hand, learned counsel for the respondent contended that unless the appellant has shown that there is substantial question of law, the appeal will not lie. In this context, it would be useful to refer to Section 30 of the Act. Section 30 of the Act specifies the categories of orders against which appeal could be filed. The above categories are enumerated as Sub-clauses (a) to (e). The proviso to the above Section states that no appeal shall lie against any order unless, substantial question of law is involved in the appeal. It is contended by the appellant that the learned Commissioner has not properly appreciated the evidence of the petitioner regarding the negligence and that it is proved that the petitioner/workman has violated the safety measures provided by the factory and that in the above circumstances, the management is not liable to pay compensation and that the above question would involve substantial question of law. On the other hand, learned counsel for the respondent contended that the finding as to negligence is a finding of fact and that it cannot be interfered with in the appeal. In support of the same he relies upon a decision reported in Tiku Kahar v. Equitable Coal Co., AIR 1930 Cal 58. In the above decision, it is held thus:

"A finding as to wilful disobedience is a finding of fact which might be arrived at on evidence and hence, it cannot be interfered with in appeal by the High Court."

He also relies upon a decision reported in N. P. Lavan v. V.A. John, 1972-II-LLJ-273 (Ker). The Kerala High Court has held that at the Commissioner's level most such employer-employee questions, legal or factual, must end appeals being open in a very limited sense, Learned counsel for the appellant relies upon a decision reported in Aslam Sirdar Ahmed Bepari v. Mohamed Ghouse

Kutbuddin Dharwadkar 1998 A.C.J. 836, wherein it is held that finding of fact which has been arrived at ignoring the material evidence, simply on the ground of surmises and conjecture is a finding vitiated by substantial error or law.

8. This Court in a decision reported in Steel Authority of India Ltd. v. Chellathurai, has also held that the appellate Court can interfere with the findings of authority, if there is perverted appreciation of evidence of findings based on no evidence. This Court has held in the above decision that the burden is upon the claimant to establish that the death was only due to accident arising in the course of official duty and that consuming poisonous chemical is not part of his duty. In the above circumstances, the Court remitted the matter for fresh disposal. Learned counsel for the appellant also relies upon an unreported judgment of this Court rendered in C. M. A. No. 635 of 1993, dated March 31, 2000. In the above case, the Court has held thus;

"For the purpose of Section 30 of the Act, if the question of law is fairly arguable or where there is a room for difference of opinion with regard to the question involved, then the question will be treated as substantial question of law. Thus, in my considered view, it is open to the appellant to challenge the findings of facts duly arrived at by the lower Court on any of the grounds mentioned above."

It is thus, seen from the above decisions that if the findings of facts arrived at by the Commissioner are perverse and based on no evidence, the same will amount to substantial question of law. In this case, it is the specific case of the appellant that the workman himself invited the accident and the proviso to Section 30 of the Act states that the employer shall not be liable if the workman is guilty of wilful disobedience. The above question is debatable. The question whether the workman is guilty of wilful disobedience will be the substantial question of law and as such, it cannot be said that the finding rendered by the Commissioner on this aspect is final and cannot be agitated in the appeal.

9. The next question that arises for consideration is, whether the finding of the Commissioner that the applicant is not guilty of wilful disobedience could be sustained on the basis of the available materials. P.W. 1, the petitioner, has stated in his evidence that instead of using the stick to push the material when it comes out, he used his hand and that he was doing the work standing on the wrong side of the machine. It is alleged in the petition that when the petitioner was feeding the material in the reprocessing machine, the right hand has got trapped into the machine. He has admitted in his evidence that in order to push the materials, he has to use the stick to insert the materials and that at the time when he was doing the work the material came out and that when he pressed it inside, he sustained injuries. He has also admitted that he did not push the material with the aid of the stick at the time. It is, thus, seen that instead of using the stick for pushing or bending material, he used his hand. The Commissioner has observed that the applicant was involved in a similar incident on a previous occasion and that it was not a serious one. It is also seen that certain safety measures are provided to the workmen while working on the machine, especially when one has to take material and push the material inside the machine. But the Commissioner has come to the conclusion that mere disobedience of safety measures does not amount to wilful disobedience. The Commissioner has also observed that "What is the convenience, an easy way of performing a piece of work and so forth on the part of the applicant in disobeying that procedure prescribed for work were not proved by the employer." Even assuming that the safety measures are in the form of written instructions,

mere carelessness on the part of the workman in using the hand for limited purposes will not amount to wilful disobedience. It can be only said that the workmen was negligent while performing his duties.

10. Learned counsel for the respondent relies upon certain decisions on this aspect. In R. Zingraji Shende v. Indian Yarn Manufacturing Company, 1993-I-LLJ-442 (Bom), it is held thus at p. 447:

"Mere negligence of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. By the expression "accident" generally means some unexpected event happening without design even though there may be negligence. To decide whether an occurrence is an accident, it must be regarded from the point of view of the workman who suffers from it and if it is unexpected and without design on his part, it may be an accident. The workman, in the instant case, met with the accident while performing his duty, though not in a diligent manner, but the fact remains that his two fingers have been crushed."

The Court had held that instructions were pasted on the notice board in the interest of the workers and inspite of this it appears that the worker was negligent and thereby due to his negligence he met with accident and got crushed his two fingers of left hand. It is, thus, seen from the above decision that to deny compensation to workman, it must be shown that disobedience, in following the instructions was deliberate. There must be material to show that the workman invited the accident deliberately.

11. In another decision reported in Deep Metal Industries, Chakan v. B.D. Gaikwad 1995 Lab IC 1002, the Bombay High Court had held that the term "wilful disobedience" would mean that is something more than a mere violation of rule. In Allah Bakhsh v. Mian Mohammed, AIR 1935 Lab 670, it is held thus:

"Mere Negligence of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. Contributory negligence on the part of the employee does not exonerate the employer from liability to compensate the employee if the accident could have been avoided by the exercise of ordinary care and diligence".

The principles laid down in the above decision will only show that there must be something more than negligence on the part of the workman while he performed his duty at the time of the accident. The Act of the workman in using the hand instead of stick at sometime can only be regarded as carelessness or negligence. At any rate, it will not amount to wilful disobedience or deliberate act. For the above reasons, I hold that the finding of the Commissioner that the workman is not guilty of wilful disobedience does not merit any interference in the appeal and as such, the above substantial questions of law are answered against the appellant.

12. Substantial question of law No. 3: It is contended by the appellant that the workman did not sustain any loss of earning capacity and as such, the Commissioner is not justified in working out compensation. The amount of compensation determined by the Commissioner is for title personal injuries sustained by the workman. The petitioner has examined the Doctor, P.W. 2, who has

estimated the partial disablement at 20%. It is contended by the appellant that loss of earning capacity is a fact, which must be proved by evidence. In this context, reliance is placed on a decision reported in Calcutta Port Commissioners v. Prayag Ram, . In Calcutta E.S. Corpn. v. Habul Chandra, AIR 1967 Cal 278, it is held that medical evidence of physical disability is not sufficient and that it must be proved that the workman as a result of the injury is unable to earn as much as he did before. In the decision of this Court reported in Sree Lalithambika Enterprises, Salem v. Kailasam, 1988-I-LLJ-63 (Mad), this Court has held that the fact that workman is paid the same wages as he was paid before the accident cannot deprive the workman of claiming compensation. The Doctor has estimated the disability as 20%. The evidence of P.W. 2, the Doctor, will show that the petitioner sustained partial disablement. The petitioner has stated that he was not employed in any other company after the accident. The respondent has examined R.W.3, the proprietor of Zodiac Company. R.W. 3 has stated that the petitioner was employed for about six months from October, 1990 to April, 1991. But he has not produced any document to show that the petitioner was employed in his factory. As the petitioner denies that he was employed in Zodiac Plastic owned by R.W. 3, the burden is upon the respondent-employer to establish that the petitioner after the accident was employed in the said company owned by R.W. 3. As there is no such evidence, it has to be held that the petitioner was unable to get the work due to the injuries sustained by him. Therefore, there can be no difficulty in holding that the petitioner has established that he sustained loss of earning capacity to the extent of 20%.

13. The Commissioner did not accept the case of the petitioner that he was paid monthly wages of Rs. 750. On the other hand, he has determined the monthly wages at Rs. 400 and accordingly, he has calculated the compensation. The total compensation arrived at by the Commissioner is Rs. 8,611. I see no error in the above calculation done by the Commissioner. For the above reasons, I hold that the findings of the Commissioner that the petitioner sustained loss of earning capacity are not vitiated by any infirmity. Hence, the above substantial question of law is answered against the appellant. I see no valid ground to interfere with the award passed by the Commissioner.

14. In the result, the civil miscellaneous appeal is dismissed. The order of the Commissioner is confirmed. No costs. Consequently, C.M.P. No. 3587 of 1994 is closed.