Supreme Court of India
Pratap Narain Singh Deo vs Srinivas Sabata And Anr on 4 December, 1975
Equivalent citations: 1976 AIR 222, 1976 SCR (2) 872
Author: P Shingal
Bench: Shingal, P.N.

PETITIONER:
PRATAP NARAIN SINGH DEO

Vs.

RESPONDENT:
SRINIVAS SABATA AND ANR.

DATE OF JUDGMENT04/12/1975

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH

CITATION:
1976 AIR 222 1976 SCR (2) 872
1976 SCC (1) 289

ACT:
Workmens Compensation Act (8 of 1923) ss. 2 (i)(1) 44 and 19 and item 3 of Part II of Sch. I-Scope of.

HEADNOTE:
Under Section 2(i)(1) of the Workmen's Compensation Act, 1923,"total disablement" means such disablement, whether of a temporary or Permanent nature, as incapacitates a workmen for all work which he was capable of per forming at the time of time ocident resulting in such disablement. Under s. 4A(3), when an employer defaults in paying the compensation within one month from the date it fell due, the Commissioner may direct payment of penalty and interest if he is of the opinion that there was no justification for the employer's delay.

The Commissioner, in the present case, awarded compensation, holding that the respondent was a carpenter by profession, that he suffered an injury by an accident which arose out of and in the course of his employment with the appellant, that it resulted in the amputation of his left arm from above the elbow, that in consequence he had become unfit for the work of carpenter as carpentery cannot be

carried on with one hand only, and that, therefore, the respondent had lost 100% of his earning capacity, that is, that he suffered total disablement. He also ordered the payment of penalty under s. 4A(3) together with interest at 6 per cent per annum.

The appellant's writ petition to the High Court challenging the order was dismissed. In appeal to this Court, it was contended, (1) that the amputation was of the nature referred to in item 3 of Part II of Sch. I of the Act and must therefore be deemed to have resulted only in permanent partial disablement, and (2) that the Commissioner erred in imposing a penalty, as com pensation had not fallen due until it was settled by the Commissioner under s. 19.

Dismissing the appeal.

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HELD: (1) The finding of the Commissioner that there was total disablement was correct. The argument with reference to item 3 of Part II of Sch I was a new case which could not be allowed to be raised by the appellant because the facts relied on had not been admitted or established. [874G-H]

(2) The Commissioner was fully justified in ordering the Payment of penalty and interest. [875A]

(a) Section 3(1) of the Act provides that an employer shall be liable to pay compensation if personal injury is caused to a workman by accident arising out of and in the course of his employment. Therefore under s. 4A(1) it was the duty of the appellant to pay the compensation at the rate provided in s. 4, as soon as the personal injury was caused to the respondent. Not only did the appellant not do so or even make a provisional payment under s. 4A(2), he took the false pleas that the respondent was a casual contractor and that the accident was caused solely by the respondent's own negligence, and raised frivolous objections before the Commissioner that he had no jurisdiction and even prevailed on the respondent to file a memorandum of agreement settling the claim at a grossly inadequate sum. He was therefore liable to pay the penalty and the interest. [875B, E-H]

(b) There is nothing in s. 10-which provides that if any question arises in any proceeding under the Act as to the liability of any person to pay company on or as to the amount or duration of the compensation it shall, in default

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of agreement, be settled by the Commissioner-to justify the argument that appellant's liability to pay compensation was suspended until after the settlement under s. 19. [815-CE]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1536 of 1970.

Appeal by special leave from the judgment and order dated the 10th November, 1969 of the Orissa High Court at Cuttack in O.J.Cs. No. 877 of 1969.

Santosh Chatterjee and G. S. Chatterjee for the Appellant.

The Judgment of the Court was delivered by SHINGHAL, J. This appeal by special leave is by Pratap Narain Singh Deo who is the, proprietor of two cinema halls in Jeypore, district Koraput, Orissa. It is not in dispute that Srinivas Sabata, respondent No. 1, (hereinafter referred to as the respondent) was working as a carpenter for doing some ornamental work in a cinema hall of the appellant on July 6, 1968, when he fell down, and suffered injuries resulting in the amputation of his left arm from the elbow. He served a notice on the appellant dated August 11, 1968 demanding payment of compensation as his regular employee. The appellant sent a reply dated August 21, 1968 stating that the respondent was a casual contractor, and that the accident had taken place solely because of his own negligence. The respondent then made a personal approach for obtaining the compensation, but to no avail. He therefore made an application to the Commissioner for Workmen's Compensation, respondent No. 2, stating that he was a regular employee of the appellant, his wages were Rs. 120/- per mensem, he had suffered the injury in the course of his employment and was entitled to compensation under the Workmen's Compensation Act, 1923, (hereinafter referred to as the Act). Notice of the application was served on the appellant on October 10, 1968 calling upon him to show cause why penalty to the extent of 50 percent and interest at 6 percent per annum should not be imposed on him under section 4A of the Act on the amount of compensation payable by him because of the default in making the payment of the compensation. The appellant contested the respondents' claim on the grounds mentioned above and on the further ground that respondent No. 2 had no jurisdiction to entertain and adjudicate on the claim. He filed a memorandum of agreement on April 10, 1969 accepting the liability to pay compensation for a sum which was found by the Commissioner to be so grossly inadequate that he refused to register it.

The Commissioner held in his order dated May 6, 1969 that the injury had resulted in the amputation of the left arm of the respondent above the elbow. He held further that the respondent was a carpenter by profession and "by loss of his left hand above the elbow he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only." He therefore adjudged him to have lost "100 percent of his earning capacity." On that basis he calculated the amount of compensation at Rs. 9800/-

and ordered the payment of penalty to the extent of 50 per cent together with interest at 6 percent per annum, making a total of Rs. 15,092/-.

The appellant felt aggrieved and filed a writ petition in the High Court of Orissa, but it was dismissed summarily on October 10, 1969. He has therefore come up in appeal to this Court by special leave.

It has not been disputed before us that the injury in question was caused to the respondent by an accident which arose out of and in the course of his employment with the appellant. It is also not in dispute that the injury resulted in amputation of his left arm at the elbow. It has however been

argued that the injury did not result in permanent total disablement of the respondent, and that the Commissioner committed a gross error of law in taking that view as there was only partial disablement within the meaning of section 2(1)(g) of the Act which should have been deemed to have resulted in permanent partial disablement of the nature referred to in item 3 of Part II of Schedule I of the Act. This argument has been advanced on the ground that the amputation was from 8" from tip of acromion and less than 41/2" below tip of olecranon. As will appear, there is no force in this argument.

The expression "total disablement" has been defined in section 2(i) (1) of the Act as follows:

> "(1) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

> "The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to item 3 of Part II of Schedule I, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 41/2" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established.

It has next been argued that the Commissioner committed serious error of law in imposing a penalty on the appellant under section 4A(3) of the Act as the compensation had not fallen due until it was 'settled' by the Commissioner under section 19 by his impugned order dated May 6, 1969. There is however no force in this argument.

Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due with after the Commissioner's order dated May 6, 1969 under section

19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of a agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under section 3, in respect of the injury, was suspended until after the settlement contemplated by section

19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.

It was the duty of the appellant, under section 4A(1) of the Act, to pay the compensation at the rate provided by section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making and application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement setting the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.

The appeal fails and is dismissed.

V.P.S. Appeal dismissed