Workmen Compensation Award Must Record Finding On Jurisdictional Fact Whether Injury/Disease Is Caused Incidental To Duties Of Service: Andhra Pradesh HC

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IN THE HIGH COURT OF ANDHRA PRADESH AT AMRAVATI

RAVI NATH TILHARI; J.

C.M.A.No.430 OF 2010**;** 13.09.2022

The New India Assurance Company Ltd.

versus

M. Lakshmi Ramateertham and others

Counsel for the appellant : Sri Naresh Byrapaneni

J U D G M E N T

1. Heard Sri Naresh Byrapaneni, learned counsel for the appellant. On 15.06.2022 the matter was posted for 24.06.2022 on the request of the learned counsel for the respondents to enable him to advance his arguments. On 05.07.2022 also the matter was posted for 08.07.2022 for the arguments of the respondents' counsel but on 08.07.2022 also none appeared to argue the matter on behalf of the respondents. The judgment was reserved.

2. This appeal under Section 30 of the Workmen's Compensation Act, 1923 (The Employee's Compensation Act, 1923) (in Short "E.C.Act") has been filed by the New India Assurance Company Limited through its Divisional Manager at Vijayawada challenging the award/order dated 05.05.2007 passed in W.C.No.6 of 2006 (Smt M. Laskhmi Ramateertham and others vs. M. Avulaiah and another) by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna, (in short the Commissioner), by which W.C.No.6 of 2006 was allowed and opposite parties therein i.e the present appellant (Opposite Party No.2 in W.C.No.6 of 2006) and the 4th respondent (Opposite party No.1 in W.C.No.6 of 2006 were directed to pay the compensation amount of Rs.3,33,034/- to the claimant/applicants i.e the respondents 1 to 3, within a specified period.

3. Sri Venkata Subbiah husband of the first respondent Smt M. Lakshmi Ramateertham died on 15.08.2005. The respondents 1 to 3 filed W.C.No.6 of 2006 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, claiming compensation against the lorry driver, 4th respondent and the New India Assurance Company appellant, on the ground that the husband of the first respondent while discharging his duties as driver, in the course of employment suffered stomach pain and was shifted to the hospital at Vijayawada where he died on 15.08.2005.

4. The claim was contested.

5. The appellant filed counter affidavit denying the allegations and putting the respondents in strict proof of the allegations.

6. The 4th respondent filed counter affidavit admitting the case of the claimants and submitting that on the date of the incident the vehicle was insured with the appellant and the policy was in force.

7. Before the Commissioner, the 1st respondent was examined as A.W.1 and the documents Exs.A.1 to A.9 were marked.8. The 4th respondent was examined as A.W.2 but no documents were marked.

9. The appellant reported no evidence.

10. The Commissioner allowed W.C.No.6 of 2006 for an amount of Rs.3,33,034/- vide award dated 05.05.2007.

11. The appeal was admitted by this Court on 07.06.2010.

12. The substantial questions of law as framed in the memo of appeal are as follows:

"i) Whether the order of the Commissioner is correct in view of the law laid down that the disease suffered by the workman should be related to the work done by him?

ii) Whether the order of the Commissioner is correct when the disease suffered by the workman does not fall under occupational disease as specified under Schedule-III of W.C. Act?"

13. Learned counsel for the appellant submitted that the disease, stomach pain suffered by the workman did not relate to the work done by him. The Ex.A.4 copy of postmortem report showed that the workman was suffering from chronic "Idiopathic Inflamatory Bowel disease".

14. He further submitted that the said disease did not fall under the occupational disease specified in Schedule-III of the E.C. Act. The Commissioner did not record any finding on the essential points aforesaid nor the reasons for its conclusion under the award.15. Learned counsel for the appellant placed reliance in the case of **Mackinnon Machenzie and Co. (P) Ltd., vs. Ibrahim Mahmmed Issak**[1] to contend that the burden of proof rests upon the workman to prove that the accident arose out of and in the course of employment. There must be a casual relationship between the accident and the employment, but on this material aspect the award is silent.

16. I have considered the submissions advanced by the learned counsel for the appellant and perused the material on record. 17. To consider the substantial questions of law framed above it is necessary to refer Section 3(1) & (2) of the E.C. Act, 1923. 18. Section 3(1)& (2) of the E.C Act, 1923 read as under:

"3. Employer's liability for compensation.- (1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable –

(a) in respect of any injury which does not result in the total or partial disablement of the *[employee] for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the *[employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *[employees], or

(iii) the willful removal or disregard by the *[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *[employee], (c) Omitted by Act 5 of 1929.

[1] 1969 (2) SCC 607

(2) If an *[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

(a) that an *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section: Provided further that if it is proved that a *[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section."

19. A bare reading of Section 3(1) of the Act, 1923 shows that the employers' liability to pay compensation to the employee is if personal injury is caused to the employee by accident arising out of and in the course of his employment.

20. The employer's liability under Section 3(2) of the Act, 1923 arises if an employee in any employment as specified in part-A of Schedule-III contracts any disease specified therein as an occupational disease peculiar to that employment, subject to fulfillment of other conditions.

21. In **Mackinnon Machenzie** (supra), the Hon'ble Apex Court held as under in paras 5 & 6:

"5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course. of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course

the workman has exposed himself to an added peril by his own imprudent act. In **Lancashire and Yorkshire Railway Co. v. Highley**[2] Lord Sumner laid down the following test for determining whether an accident "arose out of the employment":

"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury ? If yea, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of the was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his. employment, that the workman should have acted as he was. acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove: it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to. lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but' the evidence must be such as would induce a reasonable man to draw it. **Lord Birkenhead L.C. in Lancaster v. Blackwell Colliery Co. Ltd.,**[3] observed:

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

22. It is thus laid down by Hon'ble the Apex Court in **Mackinnon Machenzie** (supra) that to come within the Act the injury by accident must arise both out of and in the course of employment. "In the course of employment" means "in the course of the work which the workman is employed to do and which is incidental to it. "The words "arising out of employment" mean "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." The Hon'ble Apex Court held that there must be a causal relationship between the accident and the employment and the burden of proof rests upon the workman to prove that the accident arose out of employment and in the course of employment.

23. Therefore, the success of the claim under the E.C. Act depends upon proof of the fact that the accident arose out of and in the course of employment. The Commissioner, therefore, is required to record specific finding on that aspect on consideration of evidence on record. In the absence of any such finding the order of

[2] 1917 AC 3526

[3] 1918 WC Rep 345

the Commissioner would not be correct in the eyes of law as the aforesaid is a jurisdictional fact.

24. The Workmen Compensation Rules, 1924 are framed in exercise of powers conferred by Section 32 of the E.C Act.

25. It is apt to refer Rules 28 and 32 of the Rules, 1924 as under:

"28. Framing of issues - (1) After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(2) In recording the issues, the Commissioner shall distinguish between those issues which in his opinion concern points of facts and those which concern points of law.

32. Judgment - (1) The Commissioner, in passing orders, shall record concisely in a judgment, his finding on each of the issues framed and his reason for such finding.

(2) The Commissioner, at the time of signing and dating his judgment, shall pronounce his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of clerical or arithmetical mistake arising from any accidental slip or omission."

26. Rule 28 of the Rules, 1924 clearly provides that the Commissioner after considering any written statement and the result of any examination of the parties shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

27. Rule 32 of the Rules 1924 further provides that the Commissioner in passing orders shall record concisely in the judgment his finding on each issues framed and his reasons for such findings.

28. Rule 32 of the Rules, 1924 is akin to Order XX, Rule 5 of the Code of Civil Procedure, 1976 which reads as under:

"5. Court to state its decision on each issue- In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit"

29. In view of the statutory provisions, the Commissioner in its judgment should have framed necessary issues and concisely recorded his findings on those issues with reasons for his findings.

30. In **Smt Swaran Lata Ghosh vs. H.K. Banerjee and others**[4]**,** the Hon'ble Apex Court held that Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. It was further held that in a judicial trial the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is

[4] 1969 (1) SCC 709

satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge : a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is also intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the judgment is subject to appeal. The Appellate Court, will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.

31. In **Smt Swaran Lata Ghosh** (supra), the Hon'ble Apex Court further held that the conclusion of the Court ought normally to be supported by reasons duly recorded. This requirement transcends all technical rules of procedure. It was further held that even if it was assumed that the trial judge was satisfied that the claim of the plaintiff deserved to be decreed but the judgment of the trial judge was not final. It was subject to appeal and unless there was a reasoned judgment recorded by the trial judge, an appeal against the judgment may turn out to be an empty formality.

32. In **Balraj Taneja vs. Sunil Madan[5],** the Hon'ble Apex Court held that judgment should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the Court and in what manner. The process of reasoning by which the Court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex-parte and is ultimately decided as an ex-parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the Court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

33. In **Berger Paints India Ltd., Kolkata and another vs. Syed Vicaruddin[6],** this Court held that the judgment should be self contained and from the reading of the same facts the nature of the controversy and the decisions of the court and the reasons therefore must be evident.

34. The court finds that the Commissioner has not dealt with the material aspects in its judgment. It did not frame any issue. The Commissioner was legally required to frame issues, consider the evidence of the parties and on its appreciation must have recorded finding, giving reasons as to whether the accident was out of and in the course of employment or not and upon such a specific finding, the claim should have been decided.

35. A perusal of the order of the Commissioner shows that after mentioning the evidence of the parties led before him, he allowed the claim stating "under these circumstances for the reasons stated above, the claim application is hereby allowed….".

[5] (1999) 8 SCC 396
[6] 2004 SCC OnLine AP 884

36. The circumstances have not been mentioned under which the claim was allowed. The reasons have also not been stated in the order while allowing the claim.

37. The award under appeal, therefore cannot be sustained in the eyes of law. The appeal deserves to be allowed and the matter deserves to be remitted to the Commissioner for fresh decision.

38. The substantial question of law (i) is answered in this way that the order/award of the Commissioner is not correct as the finding on the jurisdictional point, in view of the settled law there should be relationship between the accident and the employment, has not been recorded.

39. With respect to the substantial question of law No.(ii) as to whether the deceased was employed in an employment specified in Part-A of Schedule-III and whether the disease suffered by him was occupational disease or not, as nothing has been mentioned in the award in this aspect, therefore, it is provided that the same shall be considered by the Commissioner, if such a plea was raised by the appellant in its counter affidavit in W.C.No.6 of 2005.

40. The appeal is allowed. The order/award under challenge is set aside. The matter is remitted to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna District, for fresh decision in accordance with law, within a period of six months from the date of production of copy of this judgment before the said Commissioner, after affording opportunity of hearing to the claimant-respondents and the appellant herein on the basis of the evidence already on record.

41. It is clarified that pursuant to this judgment, the appellant shall not be permitted to amend its pleading nor to file any further pleading or additional counter affidavit. The appellant shall also not be allowed to lead any evidence.

42. In the appeal, by order dated 06.09.2007, this Court granted interim stay of the award on the condition that the respondents 1 to 3 shall be entitled to withdraw a sum of Rs.25,000/- each without furnishing any security and the balance shall be kept in a fixed deposit for a period of three years in a nationalized bank. The appellant has already deposited the entire amount determined by the Commissioner under the order/award in appeal, as required by Section 30 of the E.C Act.

43. In view of the aforesaid, it is provided that the amount, if withdrawn by the respondents 1 to 3 pursuant to the interim order dated 06.09.2007, shall not be recovered from them and the balance amount which must have been invested in the fixed deposit shall continue to remain in the fixed deposit subject to timely renewal till the final adjudication of W.C.No.6 of 2006.

44. Let a copy of this judgment be sent to the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada, Krishna District.

45. No order as to costs.As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.