The Fibre Aloes Factory Vs. Jaffer Rasool

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Court : Mumbai

Decided On : Apr-03-1929

Reported in : (1929)31BOMLR1059; 121Ind.Cas.577

Judge : Amberson Marten, Kt., C.J. and ;Murphy, J.

Appeal No. : First Appeal No. 510 of 1927

Appellant : The Fibre Aloes Factory

Respondent : Jaffer Rasool

Disposition : Appeal dismissed

Judgement :

Amberson Marten, Kt., C.J.

1. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923, against the judgment of the Commissioner dated September 22, 1927, awarding compensation to the respondent. There are two grounds urged before us. One is that the appellant, the Fibre Aloes Factory by the proprietor Amratlal Amarchand had not contracted under Section 2(1) 'for the execution by...the contractor of...work which is ordinarily part of the trade or business of the principal,' and that the Commissioner wrongly construed the agreement Exhibit 11 as creating the relationship of principal and contractor between the appellants and one Ahmed Ismail. As regards that point we are satisfied that the learned Commissioner was correct in thinking that the agreement comes within Section 12(1). Whether as regards the land in suit the agreement also amounted to a lease as argued by the appellants is in our opinion immaterial. That being so, the appellants are liable to pay compensation under Section 12(1) to any workman employed by their contractor Ahmed Ismail. The respondent Jaffer Rasool was a workman, and accordingly so far as that part of the case is concerned the decision in Mb favour is correct.

2. The other point is that the respondent never gave notice as required by Section 10 of the Act. The Commissioner found that his failure to give notice was due to 'sufficient cause,' but as to that a question of some importance in principle arises. To determine that point we must first have the facts clear. What the Commissioner found is that after the accident the engineer in charge of the factory arranged to send the applicant to J.J. Hospital. Then later on he says :-

So far as the contractor is concerned he had ample notice as it was he who arranged to send him to the Hospital. No doubt he had no written notice but under Section 10 (second proviso) the failure to give notice is due to sufficient cause, viz., that the

contractor (the immediate employer had full knowledge of it.

3. Now the engineer in charge was not the contractor, and consequently to that extent these two statements are contradictory. I appreciate that under Article 10 (2) the notice in question is to be served on the employer 'or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.' But the engineer did not go into the witness-box, and so far as the evidence before us goes, there is nothing to show that the contractor himself was aware of this accident though possibly one may infer it from the knowledge of the engineer in charge, But on this point we want specific findings.

4. Another matter is that in the petition of the applicant to the Commissioner dated July 4, 1927, he specifically states in paragraph 6 that 'the opposite party was requested either to deposit compensation or to settle the matter by agreement, but it has proved impossible to settle the question in dispute, because they have denied liability to pay any compensation,' We think that the learned Commissioner should have found whether that allegation was correct, and if so, whether that request was oral or in writing and what was its date and what were its contents. Mr. Kirtikar who appears for the workman has tendered to us what purports to be a formal written letter of March 28, 1927, addressed to the present appellants which contains an endorsement 'copy forwarded with compliments to the Commissioner for Workmen's Compensation, Bombay, for information.' There is a registered envelope attached to the same file which has a certain endorsement on it, Then there is what purports to be a letter from the solicitors for the appellants dated May 9, 1927, in which they say that the above letter of March 28 was delivered in their office on April 21, We appreciate that it may not always be practicable in proceedings before the Commissioner to carry out the same exact procedure which would be followed in the High Court. And we do not know if this alleged letter of March 28 was actually on the file, as it appears it ought to have been. But we do not think it satisfactory to dispose of this case on the hypothesis that this letter never existed, and was never sent to the Commissioner, or to the present appellants. We say nothing as to whether this letter and its purported reply are genuine or not. But on the face of them they purport to be genuine. Of course, on another occasion it will be for the workman to have those letters properly proved and for the appellants to contest them if they are in a position so to do.

5. The question then on this part of the case is whether we should attempt to decide in the unsatisfactory condition of the findings of fact at present before us. In our opinion, we ought not do so, and we think that the proper course is to request the Commissioner to record further findings of fact on the matters I have mentioned, and to remit to us those findings at as early a Date as practicable.

6. We will accordingly ask him to find :-

(1) Whether the contractor himself arranged to send the workman to the Hospital or whether it was only the engineer in charge?

(2) Whether at or about the time of the accident the contractor received any oral notice of the accident ?

(3) Whether the allegations in paragraph 6 of the petition are established, and if so,

was the request in question of the applicant made orally or in writing and what was its date and what were its terms ?

(4) Whether any written notice dated on or about March 28, 1927, was sent or attempted to be sent to the appellants and to the Commissioner, and on what dates were the same received by or served on the appellants and the Commissioner respectively, and farther whether any reply in writing whether by a letter of May 9, 1927, or otherwise was sent by the solicitors for the appellants ?

7. Our final decision of the appeal will stand over pending the further findings of fact by the Commissioner.

8. As regards the question of jurisdiction, as this High Court is the Court of Appeal from the Commissioner's decisions on certain questions under the Workmen's Compensation Act, I think that we must have the ordinary powers to enable us to see that proper justice is done between the parties, and that accordingly whether or no Order XLI, Rule 25, Civil Procedure Code, applies to an appeal of this nature as to which I say nothing, we yet have the power to require proper findings of fact to be recorded before we are bound to give any decision on an alleged point of law.

Murphy, J.

9. I agree.

10. The Commissioner returned the following findings on the issues sent:-

(1) It was the engineer in charge who arranged to send the workman to the hospital and not the contractor (vide Exh. No. 6).

(2) The contractor did not, at or about the time of the accident, receive any oral notice of the accident but the engineer in charge Mr. Hussen did receive notice of the accident inasmuch as he was informed by the applicant that the accident had happened and in fact attended to the applicant and sent him to hospital (vide Exh. No. 6).

(3) The allegations in paragraph 6 of the petition are established because the Bombay Claims and General Agency acting on behalf of the applicant addressed to the Proprietors of the Fibre Aloes Factory, Powai Estate, c/o Messrs Bhimji & Co., Solicitors, Fort, Bombay, a letter (Exh: No. 17) asking for compensation for personal injury by accident arising out of and in the course of his employment with the Proprietors of the Fibre Aloea Factory in their factory, and to this Messrs. Bhimji & Co., Solicitors, replied (Exhibit No. 19) on behalf of the Proprietors, Fibre Aloes Factory, stating that the applicant Jaffer Rasool was not in their clients' employ.

(4) The applicant through his representatives, the Bombay Claims and General Agency, did send a letter dated March 28, 1927 (Exhibit No. 20), to the opposite party by registered post addressed to the Proprietors, Fibre Aloes Factory, Powai Estate, Kurla, which was returned undelivered by the post office. On April 21 a copy of this letter (Exhibit No. 17) was addressed to the Proprietors, the Fibre Aloes Factory, Powai Estate, c/0. Messrs. Bbimji & Co., Solicitors, Fort, Bombay, which was received by Messrs. Bhimji & Co. on April 21, 1927 (Exhibit No- 18), and was acknowledged by them in their letter of May 9 (Exhibit No. 19) No. 485-27 referred to above. A letter

dated March 28 being a copy of the letter of March 28 was sent to the Commissioner of Workmen's Compensation, Bombay, and wag received by him on March 28, 1927, being No. 38-1351 in the Inward Register of that office (Exhibit No. 21).

11. The appeal was heard.

Amberson Marten, Kt., C.J.

12. In our interim judgment of October 1, 1928, we held that the learned Commissioner had rightly held that the agreement Exhibit 11 created the relationship of principal and contractor between the appellants and one Ahmed Ismail, and that, accordingly, the appellants were liable to pay compensation under Section 12(1) to any workman employed by their contractor Ahmed Ismail, and that the respondent Jaffer Kasool was such a workman. We, however, remanded the case for further evidence on the point taken by the appellants that no notice, as required by Article 10 of the Act, had been given. We have now the findings recorded by Mr. Gennings, the present Commissioner and the successor of Mr. Patwardhan, who heard the case originally.

13. The more material facts appear to be as follows:-The accident was on February 23, 1927. It was a serious one and ultimately resulted in the workman losing his right hand. He was sent to hospital by the engineer in charge of the factory, and was in the hospital as an indoor patient for some forty days and as an out-patient for some further three months. His occupation is that of a cooly, and his standard of intelligence may be taken to be that of an ordinary cooly in default of evidence to the contrary.

14. Then, on March 28, 1927, which was within the forty days or so during which the workman was an in-patient, he sent three letters by his agents, the Bombay Claims and General Agency. The first letter, Exhibit SO, was sent to the 'Proprietors of the Fibre Aloes Factory, Powai Estate, Kurla,' by registered post, That letter subsequently came back with the endorsement ' Left' on it. One can see from the post-marks, that it was sent from Bombay on March 28, and that it reached originally on the 29th. The appellants' complaint is that they were not living in this factory, and that they had let it out to their contractors. Be that as it may, they in the agreement, Exhibit 11, described the factory as belonging to the Powai Estate, accordingly the normal place to send a notice would be to the factory of that estate. Therefore, in my opinion, this notice complied with Section 10(3) of the Act for it was Bent 'by registered post addressed to,...any office or place of business of the person' on whom it was to be served. The proprietors of the Powai Estate could and should have made arrangements for correspondence to be forwarded to them, supposing they were living elsewhere.

15. In addition to this notice, the respondents' agenta sent a copy of it, Exhibit 21, to the Commissioner for Workmen's Compensation. That was duly received.

16. They also sent another letter in similar terms, Exhibit 17, addressed to 'the Proprietors, the Fibre Aloes Factory, Powai Estate, c/o, Messrs. Bhimji & Co,, Solicitors, Bombay.' It is alleged by the appellants' solicitors that they did not receive the letter till April 21. Why they did not, does not appear. At any rate, they waited till May 9, before they replied by their letter, Exhibit 19, saying that this letter had been delivered at their office on April 21, and they repudiated the claim of the workman

and stated that he was not in their client's employ. We have not got the envelope of the letter sent to c/o. Messrs. Bhimji & Co., and it is conceivable that that letter found its way in due course to the Proprietors, the Fibre Aloes Factory, Powai Estate, and was handed over to Messrs. Bhimji & Co. later cm. But that is guess-work.

17. Now, that being the position, it is contended first of all, that notice of the accident was not given 'as soon as practicable after the happening thereof' within the meaning of Section 10(1). In our opinion, on all the facts of this particular case, notice was given as soon as practicable after the accident happened. The man here was a cooly, and presumably entirely ignorant of the Act, and he had this terrible injury to his person for which he was detained for more than forty days in hospital. Notwithstanding this he gave a notice at or about the time he left the hospital. Having regard then to all the facts of the case, and bearing in mind that this is a new Act-we think that this notice complied with Section 10(1).

18. In saying this we appreciate that the agents who acted on behalf of this workman have made blunders which have prejudiced his case. For instance, in the plaint that was put in it was stated originally in paragraph 4 that notice of the accident was given as soon as practicable. But the word 'not' was afterwards inserted in ink, and one must presume that it was there when the workman put his thumb-impression on the document. On the other hand, he does say in paragraph 6 :-

The applicant took the following steps to secure settlement: by agreement, viz., the opposite party was requested either to deposit compensation or to settle the matter by agreement, but it has proved impossible to settle the question in dispute, because they have denied liability to pay any compensation.

19. I think then that paragraph 4 should be read along with paragraph 6 and the rest of this document and that the question whether notice was sent as soon as practicable is really one for a lawyer to decide, and that under all the circumstances of this particular case the appellants have not been damnified or misled by this wording in paragraph 4 taken by itself.

20. But let me suppose for the sake of argument that notice as soon as practicable under Section 10(1) was not given. Then the next point is whether it was open to the Commissioner under the next proviso to excuse the delay, if he thought that the failure to give notice was due to sufficient cause. In fact, Mr. Patwardhan thought there was sufficient cause, but unfortunately for the workman, he has given as a reason one which it is difficult to substantiate, viz., that the engineer in charge had notice and that the failure to give notice was due to the fact that the contractor had thus full knowledge of it. But all that is proved is that the engineer in charge had full notice. The further findings of Mr. Gennings are that the contractor did not receive any oral notice of the accident at or about the time of the accident, although the engineer in charge did receive notice of the accident, It may here be observed that according to the evidence of the workman he looked upon Husein, the engineer in charge as the owner, but knew that the contractor was living at Surat, In fact, he had only been working there for two days. He also said in cross-examination:-

When the accident happened the engineer was there. I requested him as proprietor.

21. Assuming then that the actual cause put forward by Mr. Patwardhan cannot itself be supported, is there anything else in the case which would enable the failure to be

excused under this 1929 proviso. It has been, first of all, argued as a point of law that if no notice at all had been given, then the proviso could not J apply as it contemplated a case where some notice is given, although not in time. As far as this point is concerned we hold that, in fact, notice was given here and in due time, and that even if it was not given in due time, yet it was given. And speaking for myself I am prepared to go one step further, and to say that the proviso would apply even supposing no notice whatever had been given. In other words, if no notice at all has been given, then 'notice has not, I think, been given in due time' within the meaning of the proviso.

22. The next point is whether the failure to give notice within due time was due to sufficient 'cause.' We have already held that, in our view, it was given as soon as practicable. It follows therefore that in our view even if notice was not given as soon as practicable, there was at any rate sufficient cause for not giving it in due time within the meaning of the relevant proviso. One must here bear in mind the circumstances of this serious injury to the workman; the length of time he was in the hospital; that he gave formal notice as soon as he was out; and that the engineer in charge of the factory had at this time full notice of this injury.

23. Under all those circumstances, we do not think it necessary to Bend this case back again to the Commissioner in order to have what I may call, 'the is dotted and the t's crossed,' particularly as the original Commissioner who heard the case is not now available. We recognize that these workmen's compensation cases cannot be conducted with the same precision and the same forms of pleadings and so on as one would expect in the High Court. Taking then a general view of the case and looking at all the facts including the fact now established that written notices were given within the meaning of the Act on March 28, 1927, we think that the workman did all that he could fairly be required to do, and that justice does not require us to remand the matter a second time to the Commissioner on the ground that he is the person who has to be satisfied and not this appellate Court.

24. Under all the circumstances of the case, then, we think the fair order will be to dismiss the appeal with costs.

Murphy, J.

25. I agree.