Brahma Metal and General Engineering Factory Vs. Bahadur Singh

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Court : Allahabad

Decided On : Oct-15-1954

Reported in : AIR1955All182; (1955)ILLJ553All

Judge : Agarwala and ;M.L. Chaturvedi, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 2(1), 4, 5, 10, 11, 22 and 25

Appeal No. : F.A.F.O. No. 252 of 1954

Appellant : Brahma Metal and General Engineering Factory

Respondent : Bahadur Singh

Advocate for Pet/Ap. : S.B.L. Gour, Adv.

Disposition : Appeal dismissed

Judgement :

Agarwala, J.

1. This is an employer's appeal under Section 30(1)(9), Workmen's Compensation Act. The respondent Bahadur Singh was employed in the Appellant's factory, the Brahma Metal and General Engineering Factory at Shamli, district Muzaffarnagar. He suffered injury in the course of his employment and claimed compensation. He was drawing a salary of Rs. 180/- per month and had free quarters, the rent of which has been valued at Rs. 18/- per month. The Commissioner had awarded compensation of Rs. 5,600/- to the respondent on the basis of the salary of Rs. 180/- plus the benefit of a free house of Rs. 18/-, total Rs. 203/- per month.

2. The accident in which the respondent was injured happened on 5-5-1952. Upto January 1953, he was in the hospital and thereafter from 29-4-1953 upto the end of May, 1953 he was, according to his allegation, suffering from typhoid fever. On 29-5-1953, he made an application to the Commissioner upon which the Commissioner granted him compensation as stated above.

3. The first ground of attack taken before the Commissioner on behalf of the appellant was that the claim was not made by the respondent within time as the time fixed for filing such an application under the Workmen's Compensation Act was one year from the date of the accident. The Act, however, provides that the Commissioner may, if he finds that there was sufficient cause, entertain the claim even after the period of limitation. The Commissioner has found that there was sufficient cause for the delay in preferring the claim. The allegation as to the respondent being in the

hospital upto January 1953, and then suffering from typhoid fever upto 29-4-1953, has been believed by the Commissioner. In the circumstances the Commissioner was perfectly justified in condoning the delay and entertaining the claim.

4. The second ground of attack was that the application which was made by the respondent was not in the form as prescribed in the rules made under the Workmen's Compensation Act. This appears to be so, but the defect was rectified before the Commissioner and the Commissioner ordered that the defect having been rectified, there was nothing on the basis of which the claim could be thrown out. We agree with the order of the Commissioner in this respect and do not consider that the law requires that a claim should be thrown out simply on the ground that the claim was not made, when it was originally made, in the prescribed form. This is a defect of procedure which can be rectified with the permission of the Commissioner at any stage, and once it is rectified, the irregularity is cured.

5. The third ground of attack was that the certificate produced by the respondent before the Commissioner in proof of his disability was not admissible due to the non-production of the Civil Surgeon who granted the same. In support of this argument reliance was placed upon the decision in the case -- 'Ali Akbar v. Java Bengal Line, Calcutta : AIR1937Cal697 .

It is not necessary for us to decide in this case whether it is necessary to produce the Civil Surgeon before the certificate granted by him could be taken into consideration by the Commissioner; because, from the other evidence on the record it is established beyond doubt that the respondent was totally disabled by the injury caused to him.

A proof of this fact is provided by an order passed by the appellant firm itself. The order is quoted in the judgment of the Commissioner. It reads:

'In the circumstances mentioned above, no alternative is now left with, the Management but to terminate his services due to total disability for service with effect from 6th May, 1952. I, therefore, order accordingly.'

It was not denied before the Commissioner that the order was made by the appellant. The order speaks for itself. The respondent is admitted to have been totally disabled and on that account his services were terminated. It does not lie in the mouth of the appellant now to say that there was no proof on the record that the respondent was totally disabled.

6. The fourth ground of attack was that in calculating compensation the monetary value of free accommodation should not have been taken into consideration. Compensation is to be award-ed under the Workmen's Compensation Act on the basis of 'wages' of the injured employee. The question is, 'Is the monetary value of free accommodation to be considered as part of 'wages'.

The contention of the learned counsel for the appellant is that the word 'wages' is to be taken as defined in the Payment of Wages Act, 4 of 1936. Under the Act the word 'wages' has been defined to mean

'all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable..... .It does not include the value of any house, accommodation, supply of light, water,

medical attendance or other amenity, or of any service excluded by general or special order of the Provincial Government. .....'

According to this definition, the free accommodation granted to an employee is not to be taken into account when considering the 'wages' of the employee.

The definition of wages, however, as given In the Workmen's Compensation Act is different. If is as follows:

' 'wages' includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any compensation or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment.'

7. The words 'privilege or benefit' would in our opinion include the benefit of 'free accommodation'. When the question is what compensation is to be awarded to an employee who has been injured, the term 'wages' has to be interpreted in the light of the definition given in the Workmen's Compensation Act and not in the light of the definition given in the Payment of Wages Act. We, therefore, consider that the Commissioner was right in including the monetary value of the accommodation which was provided free to the respondent in the term 'wages' for the purpose of assessing the amount of Compensation.

8. It was next contended that the appellant had paid certain amounts to the respondent and that this should have been deducted from the compensation awarded. We find that the Commissioner has discussed this question at length and has come to the conclusion that the amounts paid were not paid towards compensation. In view of this finding, the Commissioner was justified in not taking into account the amounts paid tothe respondent from time to time. According to the respondent these amounts were paid towards his salary which was due upto 24-2-1954, on which date the order terminating his services was passed.

The appellant terminated the services of the respondent not on the date of the incident but by means of an order passed on 24-2-1954. The order purported to terminate respondent's services with retrospective effect from 6-5-1952, that is, from the date of the incident itself. This the appellant was not competent to do. There is, therefore, no force in this point as well.

9. It was then urged that certain irregularities had been committed by the Commissioner so far as the procedure was concerned. No such irregularities were urged before the Commissioner and we are unable to say that any irregularity was committed by the Commissioner. In any case we are not satisfied that any substantial question of law is involved in the present appeal.

10. We, therefore, dismiss this appeal under Order 41, Rule 11, C. P. C.