

Seetharam Warehouse Vs. Thavittil Kunhesso Anna and Two ors.

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Court : Kerala

Decided On : Jul-21-1953

Reported in : (1953)ILLJ640Ker

Judge : K. Sankaran and; Joseph Vithayathil, JJ.

Appellant : Seetharam Warehouse

Respondent : Thavittil Kunhesso Anna and Two ors.

Judgement :

K. Sankaran, J.

1. This revision petition is directed against the order passed by the Commissioner appointed under the Workmen's Compensation Act, ordering the enforcement of the award in workmen's compensation petition No. 5/1124. The petition for compensation was filed by the widow and two minor children and also the widowed mother of deceased Avarachan who was employed as a workman under the 1st counter-petitioner in W.C. No. 5/1124. As a result of the injury sustained by Avarachan in the course of his employment, he met with his death and this led to the petition by his mother, widow and minor children for compensation. After enquiring into the merits of the claim, the Commissioner passed an award of Rs. 1,200 in favour of the petitioners. When they applied for recovery of the amount covered by the award after deducting the amount admitted to have been received by them, the first counter-petitioner opposed that application and contended that entire claim had been satisfied by direct payment to the petitioners. The payments were alleged to have been made to petitioners 1 and 4 who are the widow and the mother of the deceased workman. Exhibits I and B the receipt and the statement recording satisfaction of the claim issued by these persons, were relied on by the counter-petitioner in support of his plea of complete satisfaction of the claim. The Commissioner overruled this plea and held that no direct payment as alleged by the employer can be recognised or countenanced. The 1st counter-petitioner employer seeks a revision of this order on the ground that the Commissioner has gone wrong in refusing to exercise his jurisdiction to enquire into the question of direct payment and to give credit for such payment.

2. The question of jurisdiction raised on behalf of the revision petitioner has to be decided in the light of the relevant provisions contained in the Workmen's Compensation Act, Act V of 1111 of Cochin, as amended by the subsequent Proclamation No. V of 1112 and Act III of 1113. Section 8 of this Act prescribes the special procedure to be followed in the matter of payment and distribution of compensation due in respect of a workman whose Injury has resulted in his death. Clause (1) of Section 8 runs as follows:

No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation:

Provided that, in the case of a deceased workman, an employer may make to any dependent advances on account of compensation not exceeding an aggregate of one hundred rupees and so much of such aggregate does not exceed the compensation payable to that dependent shall be deducted by the Commissioner from such compensation and repaid to the employer.

This clause is worded in general terms and it applies to every payment of compensation in respect of a workman whose injury has resulted in his death and to every payment of a lump sum as compensation to a woman or to a person under a legal disability. The amounts of all such compensation are directed to be deposited with the Commissioner and there is the express prohibition against the payment of such compensation otherwise than by deposit with the Commissioner. The proviso to the clause provides only for one exception to this mandate. This exception is limited to advance payments not exceeding an aggregate of Rs. 100 which the employer may make to any dependent of the deceased workman. Barring such advances, all other payments of compensation have to be made by depositing the amounts with the Commissioner. The consequence of acting contrary to this mandate is that

no such payment made directly by an employer shall be deemed to be a payment of compensation.

In other words any direct payment made by the employer will not be recognised by the Commissioner as resulting in a discharge of the employer's liability to pay compensation due under the provisions of the Workmen's Compensation Act.

3. There is nothing in Section 8 of the Act to indicate that the provisions contained in the section are confined to payments that may be made by the employer prior to the passing of an award by the Commissioner. As the provision stands, it is to govern all payments of compensation due either under an award or otherwise. No doubt it is open to an employer to deposit with the Commissioner the compensation amount due to the dependents of a deceased workman even before any claim is preferred by them. Where the deposit thus made is found by the Commissioner to be insufficient, he is to proceed under Section 24 of the Act by issuing notice to the employer calling upon him to show cause why the deficiency should not be ordered to be made good. Clause (2) of that section states that

if the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

This provision clearly indicates that the provision contained in Section 8, Clause (1), relating to payment by deposit with the Commissioner applies equally well to payments due under an award passed by the Commissioner, as to the initial payments that may be made by the employer even in the absence of such award. The rules framed under the Act regulating the deposit and distribution of the amount of compensation also point to the same conclusion. Rule 6, Clause (2), states that where

the employer indicates in the statement filed by him while depositing the compensation amount due in respect of a fatal accident, that he desires to be made a party to the distribution proceedings, the Commissioner shall, before allotting the sum deposited as compensation, afford' to the employer an opportunity of establishing that the person to whom he proposes to allot such sum is not a dependent of the deceased workman, or, as the case may be, that no one of such persons is a dependent. Rule 8 states that where no initial deposit has been made by the employer, the dependent of the deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman. Such an application has to be disposed of by the Commissioner in accordance with the procedure prescribed by the rules under part V of the rules. If the final decision on such application results in the passing of an award in favour of the dependents of the deceased workman, the payment of the compensation amount thus awarded has necessarily to be in the manner prescribed by Section 8.

4. The several provisions contained in Section 8 of the Workmen's Compensation Act clearly go to show that the legislature has been particularly careful to safeguard the interests of the employer as also of the dependents of the deceased workman in respect of the compensation payable. Clause (4) of Section 8 regulates the procedure to be followed by the Commissioner when the employer on his own initiative has chosen to deposit a certain amount as compensation payable to the dependents of the deceased workman. An amount not exceeding Rs. 25 is authorised to be disbursed out of such deposit to cover the actual cost of the workman's funeral expenses. The Commissioner is authorised to pay the cost of such expenses to the person who has incurred the same. Then the Commissioner has to proceed to enquire as to who are the dependents of the deceased so that the compensation amount may be distributed among them. If as a result of the enquiry the Commissioner is satisfied that no dependent exists, he has to pay back to the employer the balance of the amount deposited by him after deducting the sum paid towards the workman's funeral expenses. Where dependents have been found to exist and where the Commissioner has made a distribution of the compensation amount among them, the employer is entitled under Clause (4) of the section to get a statement showing details of all such disbursements. Under Clause (5) a discretion is given to the Commissioner for deciding the proportion in which the amount has to be distributed among the dependents. Where the person to whom the compensation amount has to be paid is not a woman or is not one under a legal disability, the Commissioner may under Clause (6) make the payment to such person without further safeguards. But Clause (7) states that where the amount is payable to a woman or a person under a legal disability, the same

may be invested, applied or otherwise dealt with for the benefit of the woman or of such persons during his disability, in such manner as the Commissioner may direct.

These latter provisions are undoubtedly intended to safeguard and protect the interests of the persons who are meant to be benefited by the payment of the compensation amount, just as the earlier provisions are meant to protect the interests of the employer. Where the compensation amount is deposited with the Commissioner so that the distribution is made by the Commissioner himself among the persons legitimately entitled to the same, the employer is protected against any further claim on account of compensation in respect of the deceased workman. The legislature has also thought it desirable not to entrust the employer with the responsibility of distributing the compensation amount among the dependents of the deceased

workman, among whom there may be women or persons under legal disability. That appears to be the reason why such direct payment by the employer has been expressly prohibited by Clause (1) of Section 8 and why the duty of distribution of the compensation amount has been cast on the Commissioner himself. An employer making a direct payment in violation of the express mandate contained in Clause (1) would be doing so at his own risk. Where the dependents deny such payment or ignore the same and seek the aid of the Commissioner to recover the compensation amount due to them, the Commissioner is not bound to enquire into the truth or otherwise of the alleged payment, in view of the express provision that even if the payment is true no such payment made directly by the employer shall be deemed to be a payment of the compensation. The Workmen's Compensation Act is a social security measure and it is obvious that the legislature intended that real and substantial relief should be afforded to the workmen and their dependents as speedily as possible in cases where they have become eligible for such relief under the provisions of the Act and that all chances of dispute regarding claims for compensation and payment of the same likely to arise between the employer on the one hand and the persons entitled to get the compensation on the other hand, should be avoided. It is precisely this intention that is attempted to be thwarted by the plea of direct payment advanced in this case by the employer. The persons in whose favour the award in this case stands are two widows and, two minor children and the case of the employer is that he paid the whole amount to the two 'widows. Even if there had been any real payment by him it could not in any way affect the rights of the two minor children. Since the widows have disputed the alleged payment, the same could not be recognised even as against them in view of the provision contained in Clause (1) of Section 8.

5. The decision of a special Bench of the Rangoon High Court in the matter of Guddai Mutayalu A.I.R. 1930 Rangoon 1 is relied on by the learned advocate for the employer in support of his contention that even a direct payment by an employer can be taken into account in settling a claim for compensation by a dependent of the deceased workman. Apparently that decision is in favour of the position taken up by him. That decision is seen to have proceeded on the basis that the whole scheme under Section 8 of the Workmen's Compensation Act is designed for the protection of the employer and that if he deposits the compensation with the Commissioner he is protected against the claims by the dependents, whether or not they have applied to be parties to the distribution. It is further stated that if he makes the distribution himself, he lays himself open to attack by persons who may afterwards turn up and claim to be dependents but that if he pays the amount to the only person who is the dependent, it is not open to that person to claim that amount over again and he can claim only the balance if the amount already paid falls short of the correct amount of compensation. In support of such a construction put upon Section 8 it is pointed out that there was nothing in that section or in any other section of the Act forbidding compensation being paid otherwise than through the Commissioner. Apart from the question of the correctness of the interpretation thus put upon Section 8, there is the significant fact that Section 8 of the Workmen's Compensation Act, VIII of 1923 Act, was fundamentally different from the section as it stands after it was amended in the year 1929. Section 8 as it stood under the Act of 1923 merely provided for deposit of the compensation amount with the Commissioner and did not expressly prohibit any other mode of distribution. But the section as amended in the year 1929 contains an express mandate that no payment of the compensation as contemplated by that section shall be made otherwise than by deposit with the Commissioner and states that no payment made directly by the employer shall be deemed to be a payment of

compensation. The provisions in Section 8 of the Cochin Act are also to the same effect. It is clear that the section as it stands cannot sustain the construction put upon Section 8 of the Indian Act of the year 1923 by the special Bench of the Rangoon High Court in the matter of Guddai Mutayalu A.I.R. 1930 Rangoon 1. The scope and effect of Section 8 as it stands at present directly arose for consideration in Kathleen Bias v. Coria (1951) 6 D.L.R. Cal. 74 : 1951 II L.L.J. 192. In that case the employer had directly paid to the dependents of the deceased workman a sum of Rs. 3,000 under a receipt which, besides acknowledging receipt of the amount, stated that they had no further claim against the employer. Thereafter the claim for compensation was considered by the Commissioner and he passed a final award fixing the compensation at Rs. 3,500. The question for consideration was whether the employer was entitled to get credit for the payment of Rs. 3,000 already made and whether he was to pay anything more than the balance of Rs. 600, It was ruled in that case that the sum of Rs. 3,000 could not be deducted from the actual amount of compensation as per the award passed by the Commissioner because Section 8, Clause (1), says that any direct payment made by the employer shall not be deemed to be payment of compensation. The same position holds good in the present case also where the employer claims to have made a direct payment as stated in Exs. I and B, the receipt and the statement given by counter-petitioners 1 and 4. In view of the mandatory provisions contained in Clause (1) of Section 8, the Commissioner was perfectly justified in refusing to recognise such direct payment and to give credit for the same. There is no force in the complaint levelled on behalf of the employer that the Commissioner has failed to exercise the jurisdiction vested in him under the provisions of the Workmen's Compensation Act. On the other hand he has only been acting within the limits prescribed by such provisions and thus properly exercising his jurisdiction.

6. The orders passed by this Court on C.R.P. Nos. 895 and 902 of 1951 cannot also serve as authorities for the position contended for by the learned advocate for the petitioner before us. In those cases there was no dispute about the payment of compensation. On the other hand, the employer as also the dependents of the deceased workman were agreed that the claim for compensation was fully satisfied. There was also no request or application by the dependents to the Commissioner invoking his jurisdiction to recover from the employer any amount by way of compensation. The dependents who had admitted satisfaction of the claim for compensation were not persons under any legal disability. It was under such circumstances that it was ordered in those cases that there was no claim to be enforced against the employer and that the proceedings had only to be terminated. It is thus clear that there was no necessity or occasion in those cases to consider the scope and effect of Section 8 of the Workmen's Compensation Act. Those orders therefore cannot be taken to contain any considered decision on the question of the scope and applicability of Section 8.

7. For the reasons stated above, we hold that no ground is made out for interfering with the order passed in this case by the Commissioner on 9 August 1951. The revision petition is accordingly dismissed with costs.