2024:BHC-AS:388

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 708 OF 1996

Shipping Corporation of India Limited, a Government Company incorporated and Registered under the Companies Act, 1956, with its Office at Shipping House, Nariman Point, Bombay – 400 021.	…Appellant (Orig. Opponent)
Versus	
Mr. Dasu M. Kutty, Since Deceased through L.R's. 1. Santha P. K. 2. Dhanya Das M. Indian Inhabitant, Both residing at Muthedath House, Post Choondel, Pudussery, Tissur-680501 Kerala State.	…Respondents (Orig. Claimants)

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Ms. Yasmeen Mohd. Sabir i/b Link Legal for the Appellant/Employer

Mr. Lalith B. Nair, Advocate for Respondents/Claimants.

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CORAM : M.M. SATHAYE, J.

RESERVED ON : 19th DECEMBER, 2023

PRONOUNCED ON : 05th JANUARY 2024

:: JUDGMENT ::

1. This Appeal is filed by the Employer Shipping Corporation of India Limited under Section 30 of the Workmen's Compensation Act, 1923, as it then was (hereinafter "the said Act" for short) challenging the Judgment and Order dated 13.02.1996 passed By 2nd Additional Commissioner for Workmen's Compensation,

Mumbai in Application No. (WCA) 612/C-140 of 1992. By the said impugned Judgment and Order, the Appellant/Employer is directed to pay to the Respondent/Claimant (now deceased) a compensation of Rs. 3,16,688/- along with interest @ 6% per annum from 14.07.1991, and also pay a sum of Rs. 75,000/- by way of penalty and cost of Rs.1000/-.

CASE

2. Few facts necessary for disposal of this Appeal are as under. The Respondent/Original Claimant - one Mr. Dasu M. Kutty claimed compensation on account of injury sustained by him arising out of and in the course of his employment with the Appellant-Employer/Original Opponent. The Respondent/Claimant was working as a seaman (Deck Sarang) with the Appellant/Employer since 1958. He was required to perform hard and strenuous work of painting, chipping, oiling, cleaning and supervisory work and even overtime. After he had already rendered long 32 years of service, on 14.01.1991, when he was on the duty on a ship, he suffered chest pain, which was reported. He continued to work and only when the ship reached Madras on 15.06.1991, he was admitted in Willington Nursing Home on medical ground and thereafter was sent to Mumbai for further treatment on 18.07.1991.

3. The Respondent/Claimant underwent by-pass surgery and was thereafter declared medically unfit on 16.12.1991 for sea-services. It is the case of the Claimant that before joining the ship he was examined by the Doctor of the Appellant/Employer and was

found fit for services. It is his case that even assuming that he was already suffering from heart disease, it got accelerated and aggravated by his duties performed on the ship including his laborious and strenuous job work. It is his case that his unfitness after by-pass surgery for sea-services amounts to permanent disablement. It is his case that his services were governed by N.M.B. Agreement (National Maritime Board Agreement) and under the said agreement he was entitled to receive fixed amount towards permanent disablement as a lump sum compensation. He has claimed it.

4. The Appellant/Employer filed written statement and contended that there was no accident arising out of or during the course of employment. It denied for want of knowledge that the Respondent/Claimant was serving with the Appellant/Employer since 1958. It further denied that the Claimant was required to perform hard and strenuous work as alleged. It denied that the Claimant felt chest pain on the ship, but continued to work. It further denied that the disease suffered by Claimant was aggravated or accelerated by the duties performed on the ship. It contended that the disability suffered by the Claimant is not permanent or 100% in nature and therefore denied the claim.

5. The learned Commissioner for Workmen's Compensation framed issues on the aforesaid rival claims and heard the matter finally. The Claimant examined himself. The Employer examined two witnesses, one Dr. Modi who was Chief Medical Officer and another - its Manager. After hearing both sides, and on appreciation of oral as well as documentary evidence, the learned Commissioner for

Workmen's Compensation, has passed impugned Judgment and Order. It appears that during pendency of the proceedings, the Respondent/Original Claimant expired and as on today, his widow and daughter are still pursuing the case.

SUBMISSIONS

6. Heard learned Counsel for the Appellant/Employer and learned Counsel for the present Respondents, who are legal heirs of Original Claimant.

7. Learned Counsel for the Appellant/Employer submitted that the amount awarded under the impugned Order is not payable because there is no total / permanent disablement in the present case. To support this argument, she relied on the cross-examination of the Claimant where he has admitted that he is a fit person to do work. It is further submitted that the penalty paid under the impugned Order is also not payable because it is not provided under the N. M. B. Agreement. It is further submitted that the injury suffered by the Claimant is not covered under Schedule-I (list of injury) of the said Act.

8. She relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Naval Kishore Sharma Vs. Union of India And Ors (Judgment and Order dated 10.02.2021 passed in Civil Appeal No. 150 of 2021)***. She submitted that in the said case, the High Court had found that the heart ailment as it existed in that case, could not be an occupational disease of the seafarer and therefore the disability compensation is not merited unless 100% incapacity is found during

the course of employment on the ship. She submitted that such finding was being tested by the Hon'ble Supreme Court. She submitted that while dealing with the argument of the Claimant that heart ailment should be understood as disability, the Hon'ble Supreme Court has held that the heart ailment is not covered within the definition of disability under the Acts involved in that case (Persons with Disability Act, 1995 and Rights of Persons with Disabilities Act, 2016). She submitted that the Supreme Court has categorically held that it would hesitate to import words which the legislature has chosen not to in the definition of disability.

9. On these submissions, she urged that in the present case also, in principle, it cannot be said that the Claimant had suffered any injury which is covered under Schedule-I of the said act and therefore the impugned Order is not justified in granting compensation under the said Act. Relying on para 15 of the said judgment, she further submitted that Clause-21 of the N.M.B. Agreement applies to the cases of 100% disability and since in the present case the Claimant is in a position to do other job, said clause would not apply. Therefore it is submitted that the impugned Order proceeding on the footing that the Claimant is entitled to compensation for 100% disability under the N. M. B. Agreement, cannot be sustained.

10. *Per contra,* learned Counsel for the Respondents submitted that the present case is clearly distinguishable on the facts. He submitted that in the present case the Claimant had joined the services of the Employer in the year 1958 as Deck-Sarang who was required to do manual work. It is submitted that the Claimant

developed heart disease due to the stress and strain of the manual work. He submitted that in the present case, the Claimant was serving for 32 long years till 1991, when he suffered chest pain and was ultimately declared unfit for the sea-services after his by-pass surgery.

11. Inviting this Court's attention to paragraph 12 and 14 of the ***[Naval Kishore Sharma's case (supra)]***, he submitted that in that case it was not the case of the Claimant that he had suffered injury during his shift duty and therefore the facts of the present case are totally different. In the present case it is the specific case of the Claimant that due to long years of manual work on the ship, he had developed heart disease. He stressed that in the case before the Hon'ble Supreme Court, the Claimant was working on the ship for very short period of 9 months and there was also no material to co-relate his heart condition with his short engagement on the ship. He further submitted that in present case, when the Claimant suffered chest pain in the year 1991, and was thereafter taken for medical examination, he had already rendered 33 long years of service on the ship and therefore, this is not a case where the Claimant has spent short time on the ship.

12. Learned Counsel for the Respondent/Claimant has finally relied upon the Judgment of this Court in the matter of ***The Shipping Corporation of India Vs. Shri Madan Karson (decided on 31st July, 2006 in the First Appeal No. 707 of 1996).*** He submitted that in this case also the Claimant had suffered from heart disease, who was granted compensation by the Labour Commissioner and it was not

interfered with by the Hon'ble High Court in limited jurisdiction of this Court u/s. 30 of the said Act. He submitted that in that case also the Tribunal had accepted the case of the Claimant based on evidence on record and after hearing both sides, the challenge raised by the present same Employer was rejected. He submitted that in the case of ***[Madan Karson (supra)]*** also, the Claimant was working as Engine Sarang and was in the employment on the ship from 1959 till 1994 which was a long duty of manual work, just like the present case. He submitted that therefore in the facts of the present case, ***(Madan Karson's case)*** would squarely apply and the compensation granted by the Tribunal should not be interfered with.

Reasons and Conclusions

13. It is settled position of law under first proviso to section 30 of the said Act, that no appeal shall lie to this Court against any order unless a substantial question of law is involved in the appeal. Support is drawn from the Hon'ble Supreme Court's decision in the case of ***Shakuntala C. Shreshti Vs. Prabhakar M. Garvali and Anr. - (2007)11 SCC 668*** which is followed recently by the Hon'ble Supreme Court in the case of ***C. Manjamma Vs. Divisional Manager, New India Assurance Company Ltd. – (2022) 6 SCC 206.*** Let us therefore scrutinize the arguments of the Appellant / Employer in that light.

14. As far as the first submission that the Respondent/ Claimant has not suffered total disablement is concerned, the Appellant/ Employer is relying on an admission given by the

Respondent/Claimant where he has stated that he is a fit person to do work. I have carefully considered the cross-examination of the Respondent/Claimant. It is important to note that the claim is arising out of contractual liability governed by the N.M.B. Agreement. Perusal of Clause-21 of the said agreement shows that in case of 100% disability, the compensation is quantified and the applicable amount is claimed by the Respondent/Claimant. The 100% disability as mentioned in the Clause-21 of the N.M.B. Agreement must be interpreted to mean 100% disability to work as a sea-man. It is not in dispute that the Respondent/Claimant was declared as medically unfit to work as a seaman. The relevant portion of his cross-examination is reproduced below.

> *"At present, I can do the work. I did write letter to the company to give me job. I am fit person to do work and I am also capable to do the work. Company has given me medical treatment".*

It is clear from bare reading of these words of the Respondent/Claimant that it is more of a desire than actual medical fitness. This Admission is clearly indicating that the Respondent/Claimant desired to continue to work on the ship. But this admission, by no stretch of imagination, can be taken to override the admitted position that the Respondent/Claimant was medically declared unfit to work as seaman.

15. In any case, there is no question of law, much less substantial question of law involved in this argument and there is no merit in it.

16. Next submission of the Appellant/Employer is that the injury suffered by the Respondent/Claimant is not covered under Schedule-I of the said Act and therefore the impugned Order is not justified. For this submission she relied on the judgment of ***Naval Kishore Sharma (supra)***. In this regard, the argument of the Respondent/Claimant that the present case is clearly distinguishable on facts, is correct. In ***Naval Kishore Sharma's*** case, the Claimant was working on the ship for a short period of 9 months and it was clear case where there was no material to co-relate his heart condition with his short engagement on the ship. In the present case, the facts are totally different. In the present case, when the Respondent/Claimant suffered chest pain for the first time in the year 1991, he had already rendered 32 long years of services on the ship and despite his chest pain, which was reported to the Chief Officer, there is nothing to indicate that he was put on rest immediately. In fact, when the ship reached Madras on 15.06.1991, the Respondent/Claimant was admitted to a nursing home and thereafter sent to Mumbai.

17. It is the specific case of the Respondent/Claimant that whatever happens to a workman on a ship is recorded in a logbook on the same day. The learned Commissioner has held that the log book is in possession of the Appellant/Employer, which is not produced on record. The testimony of the Respondent/Claimant that in January-1991 he suffered chest pain but still continued to work and was sent for medical examination to the nursing home at Madras for the first time in June-1991, has not been controverted except for

bare denial. In such circumstances, the Judgment in Naval Kishore Sharma's case cannot be applied to the facts of this case.

18. In this respect, reliance placed by the learned Counsel for the Respondent/Claimant on the Judgment of ***SCI Vs. Madan Karson (supra)*** has merit. In that case also, the Claimant had suffered heart disease who was granted compensation by the Labour Commissioner and it was confirmed by this Court. In that case also the Labour Commissioner had accepted case of the Claimant based on evidence. In that case also, the Claimant was working as Engine Sarang and was in employment on the ship for long duration of 35 years 1959 till 1994 constituting long duty of manual work, just as in the present case. Therefore in my considered view, the facts of the present case are almost identical to the facts of the case in the Judgment of ***SCI Vs. Madan Karson (supra)***

19. In this argument also, there is no question of law, much less substantial question of law involved and there is no merit in it. The distinction is purely factual.

20. The final argument of the Appellant/Employer is that penalty could not have been awarded in the present case because it is not provided under the N.M.B. Agreement. From the reading of the impugned Judgment and Order it is clear that the Appellant/Employer has not disputed the jurisdiction of the Commissioner for Workmen's Compensation. The learned Commissioner has rightly considered that the compensation fell due way back in 1991 and it was still not paid and the matter was still

contested when the impugned Order was passed in February 1996. The learned Commissioner has further rightly held that the said Act itself provides that if the compensation is not paid when due, the employer has to pay interest and also becomes liable to pay penalty. Based on these provisions of the said Act, the learned Commissioner has passed the impugned Order of interest as well as penalty. In such circumstances, when the jurisdiction of the learned Commissioner is not under challenge, the grant of interest and penalty under the statutory provisions, cannot be faulted with.

21. Therefore, in the facts of this case, I find that there is no reason to interfere. The appeal is accordingly dismissed. No Order as to costs.

22. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)