

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1627/2005

APPORVA SHAH

V

THE COMMISSIONER, WORKMEN COMPENSATION & ORS.

Date of Judgment:

22nd September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Ms. Anupama Chaturvedi, for the appellant.

Mr. Rajnish Gupta for the respondents.

By Court:

The appellant has challenged the award dated 28.4.04 passed by the Commissioner, Workmen Compensation, Sawai Madhopur & Karauli whereby he has awarded a compensation of Rs. 4,48,000/- alongwith 12% interest per annum in favour of respondent No.2.

The brief facts of the case are that the son of respondent No.2, was working under the appellant on the 'Panchna Bandh' project, Karauli on the post of Gas Cutting & Electric Welder. On 7.7.02, while the son of respondent No.2, Suraj Bali, was working on a girder, the girder fell on him. Consequently, he died. At the time of his death Suraj Bali was

only 20 years old and was earning a monthly pay of Rs.6,000/-. Since the respondent No.2, being the mother, was economically dependent upon the deceased, she filed a claim petition before the Commissioner, Workmen Compensation. In the petition, she claimed a compensation of Rs. 4,48,000/-. Initially, the case was filed by her against N.Patel Partner & Proprieter Docks Engineering Works and against Kamleshbhai Manager of the said firm. However, subsequently, she moved an application wherein she prayed that instead of name of N. Patel Partner Proprieter Docks Engineering Works, the name of Apurva Shah, the appellant before this Court, should be substituted. And simultaneously, she moved an application that the name of respondent NO.2 Kamleshbhai should be deleted from the array of the respondents. Vide order dated 17.2.03 both the applications were allowed and the name of Apurva Shah was substituted in place of N. Patel. On 17.2.03 itself the notice was sent to Apurva Shah. On 28.1.04, on behalf of the Apurva Shah, one Heera Lal, Supervisor appeared and requested for the time for filing the written statement. However, subsequently no written statement was filed on behalf of the

appellant. Therefore, vide order dated 24.2.04 it was directed that ex-parte proceedings should begin against the appellant. During the course of the proceedings the respondent No.2 also moved another application requesting that the Executive Engineer, Irrigation Division should be arrayed as respondent No.3. Vide order dated 15.5.04, the said application was allowed and the Executive Engineer was arrayed as respondent No.3 and the notices were issued to him on the same day. Interestingly, even respondent No.3, despite the service of notice on him did not appear. Therefore, ex-parte proceedings were also initiated against him. Since neither the appellant nor the respondent No.3 appeared, vide award dated 28.4.04, the case was decided against the appellant. Hence this appeal before this Court.

Mrs. Anupama Chaturvedi, the learned counsel for the appellant has vehemently argued that according to the impugned award Heera Lal, Supervisor had appeared not on behalf of the appellant, but appeared on behalf of the Executive Engineer. According to her, notices were not served on the appellant. In the absence of service of notice, the learned

Commissioner was not justified to proceed ex-parte against the appellant. Furthermore, she contended that since the deceased was already covered by a group insurance taken by the appellant, the claimant could not have filed the case under the Workmen's Compensation Act. According to her, within two months of the accident the Insurance was informed about the accident. However, the claimant intentionally did not implead the Insurance Company as a party before the learned Commissioner. Moreover under Section 3 sub-section 5 sub-clause (b) of the Workmen Compensation Act, (henceforth to be referred to as 'the Act', for short) the claim petition was not maintainable as the person was already covered by an agreement between the appellant and the Insurance Company.

On the other hand, Mr. Rajnish Gupta, the learned counsel for respondent No.2, has strenuously argued that a bare perusal of the relevant order-sheets would clearly reveal that Heera Lal, Supervisor had appeared on behalf of the appellant and had prayed for the time. Thus, the appellant had ample notice about the pendency of the case. Despite the said notice, the appellant neither filed the written statement nor

participated in the proceedings. Therefore, the learned Commissioner was justified in proceeding ex-parte and in passing the award ex-parte. He has further argued that the liability for payment of compensation to the respondent rests on the employer. The Insurance Company is only bound to indemnify the employer. Therefore, no illegality has been committed in not making the Insurance Company a party to the claim petition. Lastly, he has argued that it is too late for the appellant to raise the contention that the claim petition is not maintainable. The Insurance Company has already deposited the claim amount with the learned Commissioner. Hence, he has supported the impugned award.

We have heard both the learned counsels and have perused the record as well as examined the impugned award.

A bare perusal of the order-sheets clearly reveal that on 17.12.03 an application had been moved for substituting the appellant in place of N. Patel and for deleting the name of Kamleshbhai. Both these applications were allowed. Thus after 17.12.03 only the appellant was the

respondent before the learned Commissioner. The order dated 14.1.04 clearly states that the summons have not been returned. Therefore, the case was posted for 28.1.04. On 28.1.04 one Heera Lal, Supervisor appeared before the learned Commissioner and sought time for filing of the written statement. Interestingly, on 28.1.04, the appellant was the only respondent before the learned Commissioner and it was not till 15.5.04 when the Executive Engineer was arrayed as a respondent in the case. Thus, clearly on 28.1.04 Heera Lal, Supervisor was representing the appellant and not the Executive Engineer. After all, on 28.1.04 the Executive Engineer was not even impleaded as a party. Therefore, the observation made by the learned Commissioner in the impugned award that Heera Lal, Supervisor appeared on behalf of respondent no.3, Executive Engineer, is belied by the order-sheets available on the record. Since Heera Lal, Supervisor had appeared on 28.1.04, naturally he would not have appeared on his own, but must have appeared only at the behest of the appellant. Therefore, it does not lie in the mouth of the appellant to claim that Heera Lal, Supervisor was not

authorised by him. Curiously, the appellant has not even claimed that Heera Lal, Supervisor is not his employee. Since Heera Lal, Supervisor was his employee, a reasonable conclusion can be drawn that Heera Lal, Supervisor had appeared before the learned Commissioner at the behest of the appellant. Once the appellant was represented before the learned Commissioner, he was duty bound to file his written statement to protect his interest. But, the appellant failed to do so. Therefore, the learned Commissioner had no option but to proceed ex-parte against him. Therefore, the first contention raised by the learned appellant is without any merit.

The deceased in the present case was a young man doing a semi-skilled job. As a semi-skilled labourer the high probability is that he was uneducated and ill-informed. The appellant has not produced any evidence to prove that the deceased or his old mother were aware of the fact that the deceased was covered by a group insurance policy taken by the appellant. In the absence of such knowledge the claimant cannot be expected to implead the Insurance Company as a party before the learned Commissioner. In the absence of such

evidence, the benefit of Section 3(5)(b) of the Act cannot be given to the appellant. Admittedly, the Insurance Company has deposited the claim amount before the learned Commissioner. Therefore, a grave injustice would be caused in case the said amount is denied to her and she is forced to again run from pillar to post seeking the compensation under the group insurance policy. One cannot lose sight of the fact that the Workmen's Compensation Act is a social beneficial piece of legislation which is meant to rescue the family of the workman who is financially crippled and emotionally shattered by the sudden death of the bread earner. The mother of the deceased was both financially and emotionally dependent on her son. Unfortunately, the son was snatched away by the cruel hands of fate in a sudden accident at the working place. Her efforts to be paid a reasonable compensation for the sudden death of her son has been hanging fire for the last four years. The claimant can no longer be kept in an animated suspension waiting hopelessly for the payment of compensation which is rightfully hers. Hence, this Court is not inclined to interfere with the impugned award dated 24.8.04.

While this Court upholds the said award, we direct the learned Commissioner to release the amount deposited by the Insurance Company, an amount of Rs.4,48,000/- to the respondent No.2. In order to calculate the interest @ 12% per annum applicable on the principal amount of Rs.4,48,000/- and to recover the penalty amount from the appellant, the respondent No.2 is directed to appear before the learned Commissioner on 16.10.2006. The respondent No.2 is also directed to move an application for release of the said amount. The said amount shall be paid by the appellant through a cheque to the respondent No.2 on 31.10.2006. After the payment of the penalty and the interest, the appellant is free to recover the said amount from the Insurance Company.

In the result, this appeal has no force. It is, hereby, dismissed with above observations. No order as to cost.

(R.S. CHAUHAN) J.

MRG.