

Deputy Labour Commissioner, Orissa Bhubaneswar

Vs

Abhimanyu Gouda

(S. B. Majmudar, M. Jagannadha Rao, JJ.)

04.11.1997

JUDGMENT

S.B.MAJMUDAR, J.

1. In this appeal by special leave the order of the High Court of Orissa at Cuttack dated August 17, 1981 passed in Civil Revision No.2 of 1981 has been brought in challenge.

2. The question involved is one of jurisdiction of the Deputy Labour Commissioner, Orissa to entertain claims for workmen's compensation in connection with the accident caused to the workmen in the course of and arising out of employment at Rourkela in Orissa State. The High Court in the impugned judgment has refused to review its earlier decision to the effect that it is only the Labour Commissioner at Rourkela who could have entertained the claim and not the Deputy Labour Commissioner, Orissa.

3. A few relevant facts leading to this proceeding may be noted at the outset. One Smt. Dukhi Jena, respondent No.2 herein who is shown to be the proforma respondent filed a claim petition before the Deputy Labour Commissioner-cum Commissioner for Workmen's Compensation, Orissa, Bhubaneswar, claiming compensation from Respondent No.1, Abhimanyu Gouda on the ground that her deceased husband was a Khalasi in a truck belonging to Abhimanyu Gouda. He met with a fatal accident on May 9, 1974 in the vicinity of Rourkela town in the state of Orissa. The appellant is the authority before whom such claim was raised. The appellant after hearing the parties exercised his jurisdiction as Commissioner for Workmen's compensation and awarded an amount of Rs.8,000/ by way of compensation to respondent No.2 and made it payable by the respondent No.1. Being aggrieved by the order of the appellant, the Deputy Labour Commissioner-cum-Commissioner for Workmen's compensation, Orissa at Bhubaneswar, the respondent No.1, the owner of the truck filed an appeal in the High Court of Orissa being Miscellaneous Appeal No.289 of 1977. The High Court by its judgment dated November 12, 1980 allowed the appeal of the respondent No.1 by holding that the appellant, Deputy Labour Commissioner, Orissa at Bhubaneswar had no jurisdiction to entertain the claim petition filed by the respondent No.2. It is pertinent to note that the appellant was not made a party in that appeal nor was any opportunity given to the appellant to have his say in connection with his jurisdiction to entertain the claim petition. The High Court held that since the accident had taken place outside the jurisdiction of the appellant only the Commissioner for Workmen's Compensation at Rourkela could entertain the claim petition and not the appellant.

4. The appellant having come to know about the aforesaid decision of the High Court moved the High Court in a review petition which came to be disposed of on August 17, 1981 by the impugned order which recites that the application was not maintainable and the opposite party (O.P.) states that he will file a separate petition for review of the judgment on the ground that the relevant notification was not brought to the notice of the High Court and he was permitted to file such

application.

5. We may state at this stage that against the original order of the High Court dated November 12, 1980, the respondent No.2, the original claimant, filed a civil appeal being C.A.No,10106 of 1983 before this Court. This Court by order dated October 28, 1983 directed the Insurance Company to pay a sum of Rs.8000/ to the respondent No.2 in full and final settlement of her claims against the Insurance Company. In addition thereto, this Court directed the respondent No.1 to pay an equal amount of Rs.8000/ to the respondent No.2. It was further directed that out of Rs.14,000/ deposited by the respondent No.1 before the Deputy Labour Commissioner, Rs,8,000/ will be paid to the respondent No.2. It is also not in dispute that pursuant to the order of this Court the Insurance company paid a sum of Rs.8,000/ to the respondent No.2 and out of the deposited amount of Rs.14,000/ by the respondent No.1, an amount of Rs.8,000/ was to be paid to the respondent No 2 and the balance amount of Rs.6,000/ plus interest was to be refunded to the respondent No.1. In view of the aforesaid decision of this Court in C.A.No.10106 of 1983 it can be stated that the question of jurisdiction of the appellant commissioner would not survive for serious consideration as the claimant respondent No.2 has been ordered to be paid the full amount of compensation claimed by her against the respondent No.1. Still however as the appellant is aggrieved by the decision of the High Court on the question of jurisdiction which affects large number of claim petitions under the Act, we now proceed to examine the controversy about the jurisdiction of the appellant to entertain the original claim petition of the respondent No.2. So far as this question is concerned, we must note that before the High Court in the preview proceeding it was submitted that there was already notification issued by the state of Orissa conferring jurisdiction on the appellant to entertain such claims under the Workmen's Compensation Act, 1923 in connection with the accidents which might have occurred in any part of the State of orissa. When such a notification was pressed in service we fail to appreciate as to how the High Court was justified in not entertaining the review petition when the relevant notification was earlier not brought to Its notice specially when the appellant was not given an opportunity to point out the notification before the High court, as he was not a party nor any notice was issued to him in connection with that case. Therefore, it must be held that the order on review petition dated August 17, 1981 passed by the High court cannot be sustained and has to be set aside.

6. The moot question is as to whether the High Court was right in rejecting on the ground of jurisdiction of the Commissioner the-claim of the respondent No.2 against the respondent No.1 in connection with the fatal accident caused to her deceased husband during the course of and arising out of the employment of respondent No.2's husband under respondent No.1. It is true that the accident had taken place near Rourkela was invited to the notification issued on July 2, 1965 by the State of Orissa in Labour, Employment and Housing Department said notification was issued in exercise of the powers conferred on the State by subsection (1) of Section 20 of the Workmen's Compensation Act, 1923. The Officers listed therein in column (1) were ordered to be Commissioners for Workmen's Compensation with respective jurisdiction as specified in column (2) of the said notification against each of the listed officers. At Column (2) in the said notification was listed the Deputy Commissioner, Orissa, Bhubaneswar, the appellant herein and the area of his jurisdiction is shown to be the Whole of the State of orissa. Therefore, the appellant had jurisdiction to entertain the claims for workmen's compensation in connection with the accidents arising in any part of the State of orissa for which claims were to be lodged under the Act against the employers. If this notification had been seen by the High Court it could never have held that the appellant had no jurisdiction to entertain the claim petition. It is not in dispute that though the accident took place in 1974 the aforesaid notification of July 2, 1965 held the field. Therefore, there is no escape from the conclusion that the appellant at the relevant time in 1974 when the accident took place had

jurisdiction to entertain the claims petition. The order of the High Court taking the contrary view is therefore, quashed and set aside. The appeal is accordingly allowed. There would be no order as to costs.