

Bombay High Court

The Shipping Corporation Of India ... vs Ratanji Somabhai Tandel on 21 January, 2011

Bench: D.G. Karnik

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FA 742/1998

abs

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION  
FIRST APPEAL NO. 742 OF 1998

The Shipping Corporation of India Limited .. Appellant  
V/s

Ratanji Somabhai Tandel .. Respondent

Mr. Tariq Baig with Mr. S. Dasa i/b Bhatt & Saldhana for the

appellant.

Mr. S.C. Naidu with Mr. N.P. Dalvi and Mr. T.R. Yadav i/b C.R.  
Naidu & Co. for the respondent.

CORAM : D.G. KARNIK, J.

DATE : 21ST JANUARY 2011

ORAL JUDGMENT:

1. By this appeal, the appellant challenges the judgment and order dated 22nd May 1998 passed by the Commissioner for Workmen's Compensation and Judge, 11th Labour Court, Mumbai, awarding compensation of Rs.1,73,295/- to the respondent.

2. The appellant is a shipping company. The respondent was employed by the appellant and was posted on the appellant's ship "CV Raman" as a Helmsman from 26th March 1993. In 2 FA 742/1998 July 1993, the respondent suffered from fever and was sent for medical treatment. In the medical check up, it was discovered that the respondent was suffering from Diabetes Mellitus. As per the rules of the appellant company, a workman suffering from Diabetes Mellitus is not fit for duty on a ship. Accordingly, the appellant company discharged the respondent from the service on the ground that he was medically unfit. The respondent thereafter by his letter dated 18th October 1993 requested the appellant to pay him compensation. On failure of the appellant to pay the compensation, the respondent filed a claim application under the Workmen's Compensation Act, 1923 (for short "the Act"). After considering of the oral and documentary evidence adduced by the parties, the Commissioner came to the conclusion that Diabetes Mellitus was an employment injury arising out of and in the course of the employment with the appellant and was therefore entitled to a compensation. He accordingly directed the appellant to pay to the respondent the compensation of Rs.1,73,295. That order is impugned in this appeal.

3. Learned counsel for the appellant submitted that there was no evidence that the respondent suffered any injury in the course of and arising out of the employment. Contracting of the 3 FA 742/1998 disease Diabetes Mellitus cannot be said to be an employment injury. Diabetes can be caused due to many factors, such as genetic, obesity, life style, unhealthy diet, etc. The cause of the respondent suffering from diabetes in the present case was not attributable to the employment with the appellant and hence the appellant was not liable to pay any compensation.

4. Per contra, learned counsel for the respondent submitted that though the diabetes may not have been contracted by the appellant on account of the employment, he was entitled to compensation by reason of the National Maritime Board (India) Agreement.

5. The questions of law that arise for my consideration in this appeal are:

(i) Whether the Tribunal was right in holding that contracting of diabetes was an injury arising out of and in the course of employment with the appellant?

(ii) Whether the respondent was entitled to claim compensation under the Workmen's Compensation Act on the basis of National Maritime Board (India) 4 FA 742/1998 Agreement?

6. So far as the first point is concerned, Mr. Naidu for the respondent fairly conceded that Diabetes Mellitus per se cannot be said to have been caused because of the employment. He admitted that there was no evidence in the present case that the appellant suffered Diabetes Mellitus on account of the employment with the appellant. There was no cause and effect relationship between the employment and the disease. Apart from the concession which is fairly made by Mr. Naidu, this

Court in the case of Shipping Corporation of India Ltd. v.

Madhavan, 2005 III CLR 491, has held that diabetes can be caused to due various factors such as genetic, hypertension, stress, etc. It was necessary for the respondent-workman to establish before the Commissioner on evidence that the work which was performed by him led to the disease. Unless the employment was the cause of which Diabetes Mellitus was the effect, the respondent was not entitled to claim compensation on account of suffering of Diabetes Mellitus while he was in the employment.

7. Schedule III of the Act gives a list of occupational diseases.

"Diabetes Mellitus" is not one of the diseases mentioned in the 5 FA 742/1998 list. Even if it is assumed that it is open to a workman to establish that a particular disease, which is not listed in the list of occupational diseases, has been caused because of and during the course of employment, in the present case no evidence was adduced by the respondent to show that "Diabetes Mellitus" was caused on account of or was in any way related to the employment of the respondent with the appellant. Point no.(i) must therefore be answered in the negative and in favour of the appellant.

8. Record before the Commissioner for Workmen's Compensation was called. I have examined the record. The agreement titled as "National Maritime Board (India) Agreement" of the year 1986 on which reliance has been placed by the respondent, has not been produced on record. It appears that it is not an agreement executed by or between the parties to the appeal, but appears to be some convention or agreement entered into between seamen and the employers of seamen. It is not shown that the agreement is binding on the parties to this appeal. Even if it is assumed that the appellant is in any way liable under the alleged agreement, in my view, the liability which arises under the agreement cannot give rise to a claim under the Act The Commissioner appointed under the Act would 6 FA 742/1998 have no jurisdiction to award any compensation under the agreement. No specific provision under the Act was brought to my notice under which an employee would be entitled to file an application for compensation in respect of a claim arising under the National Maritime Board (India) Agreement. Section 10 of the Act provides that no claim for compensation shall be entertained by a Commissioner unless a notice of accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death. Section 10 therefore contemplates making of an application to the Commissioner for a claim arising under the Act and imposes restriction that such an application cannot be entertained unless (i) a notice of accident has been given, and

(ii) the claim has been preferred within 2 years. Section 10 contemplates that the Commissioner would get a jurisdiction to award a compensation in respect of a claim arising under the Act, i.e. for an injury caused out of an accident arising out of and in the course of employment. If a claim arises not in respect of an injury caused in the course of an employment but arises out of any other contract, such a claim cannot be entertained by the Commissioner under the Act. Sub-section (5) of section 3 of the 7 FA 742/1998 Act gives an indication that the jurisdiction of a civil court is not totally ousted and in certain matters, civil court has jurisdiction to entertain a suit for damages. In

my view, a claim arising under any collateral contract and not under the Act cannot be enquired into and decided by the Commissioner appointed under the Act. Such a claim can only be made and decided by ordinary Civil Courts in accordance with the law of the land. No provision was pointed out to me which confers a jurisdiction on the Commissioner appointed under the Act to entertain a claim under a contract and not for an injury suffered by a workman in the course of the employment. In the circumstances, the Commissioner had no jurisdiction to entertain and try the claim based purely on the contract, if at all there be any. Point no. (ii) is also answered in the negative.

9. For these reasons, the appeal is allowed. However, in the facts and circumstances of the case, the parties shall bear their own costs. The money which has been deposited by the appellant before the Commissioner together with interest, if any, accrued (if the amount has been invested) shall be paid to the appellant after 12 weeks.

(D.G. KARNIK, J.)