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MORGINA BEGUM

v.

MANAGING DIRECTOR, HANUMAN PLANTATION LTD.

SEPTEMBER 26, 2007

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[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Workmen's Compensation Act, 1923:

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s. 21(1)(b)—Jurisdiction—Accident in Nagaon resulting in death of deceased—Parents of deceased started residing with son-in-law at Tezpur for their livelihood—Claim petition filed by parents before the Commissioner, Tezpur—Maintainability of—Held: Maintainable—Interpretation of statutes—Beneficial legislation.

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Deceased was an employee of the respondent Company. He died in accident which took place in Nagaon. His parents filed petition for claiming compensation under Workmen's Compensation Act before the Commissioner, Tezpur. In the said petition, Commissioner, Tezpur awarded compensation of Rs.2.70 lacs. The respondent company challenged the award before the High Court raising two arguments, that the Commissioner, Tezpur had no jurisdiction to entertain the claim petition and the death of the deceased did not occur during course of employment.

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The High Court held that the Commissioner, Tezpur had no jurisdiction to entertain the claim petition and accordingly set aside the order of the Commissioner, Workmen's Compensation, Tezpur, without going into the second argument.

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In appeal to this Court, appellant-claimant contended that the claim petition was filed at Tezpur because both the claimants, i.e., the father and mother of the deceased started residing at Tezpur with their son-in-law after the death of their son.

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Allowing the appeal on issue of jurisdiction and remitting the matter to High Court to consider case of respondent on merits, the Court

HELD: 1. S.21(1)(b) of Workmen's Compensation Act, 1923 provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. The expression 'ordinarily resides' means where the person claiming compensation normally resides at the time of filing the claim petition. The proviso to S.21(1) provides that in case Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he is required to give a notice to the Commissioner having jurisdiction over the area and the State Government concerned.

[Para 6] [377-A, B, C]

1.2. The idea is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident for filing a claim petition. It may be very expensive for the claimants to pursue such a claim petition because of the financial and other hardship. Labour statutes are for the welfare of the workmen. Therefore, the view taken by the High Court that the claim petition could only be filed at the place where the accident had taken place, cannot be sustained. S.21(1)(b) read with its proviso is a beneficial legislation for the welfare of the workmen and by the above interpretation, it will advance the cause of the workmen. [Para 7] [377-G; 378-A, E, F]

Bharat Singh v. Management of New Tuberculosis Centre, New Delhi and Ors., [1986] 2 SCC 614, relied on.

S.K. Saukat Ali Alias Sekho S.K. v. Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack and Ors., (1999) 2 Transport and Accident Cases 638 (Ori) and *Noorjahan v. National Insurance Co. Ltd. Hyderabad and Anr.*, (1999) 3 T.A.C. 276 (AP),

A approved.

2.1. Both the claimants, i.e., the father and mother of the deceased have been examined and they appeared in the witness box as PW-1 and PW-2. PW-1, the father of the deceased has clearly stated in his examination-in-chief that they are residing with their son-in-law at Tezpur for their livelihood. Similarly, the mother of the deceased has stated on the same lines that they are residing at Tezpur with their son-in-law. A suggestion given to her that they were residing at Nagaon has been emphatically denied by her. The statement of these two witnesses that they are presently residing at Tezpur for their livelihood was believed by the Commissioner, Workmen's Compensation, Tezpur.

[Para 8] [378-G; 379-A]

2.2. Respondent's contention that simply by saying that they are residing at Tezpur is not enough to prove their statement but they should produce documents to show that in fact they are residing at Tezpur is not accepted as there is a clear statement by both the claimants that they started residing at Tezpur after the death of their son. If the respondent wanted to prove that they were deposing falsely, he should have cross-examined these witnesses and challenged their testimony in the witness box on this point, which has not been done.

[Para 8] [379-B, C]

3. The High Court has considered the appeal only on the ground of jurisdiction and not on merits. Hence matter is remitted to High Court to consider the case of the respondent on merits with regard to the second point urged before it and decide the same expeditiously.

[Para 9] [379-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4548 of 2007.

G From the Judgment and Order dated 10.02.2006 of the High Court of Gauhati in Miscellaneous First Appeal No. 86 of 2002.

Manish Goswami (for M/s. Map & Co.) for the Appellant.

C. Mukund, Ashok Jain, Pankaj Jain and Bijoy Kumar Jain for the Respondent.
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The following Judgment of the Court was delivered

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1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dtd 10.2.2006 of the Division Bench of the High Court of Gauhati whereby the High Court has set aside the order of the Commissioner, Workmen's Compensation, Tezpur dated 04.10.2002.

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3. For convenient disposal of this case, a few facts may be mentioned. Deceased Md. Rajik Ahmed was an employee of the respondent company. He died on 14.07.2000. A petition for claiming compensation under the Workmen's Compensation Act was filed by the father and mother of the deceased before the Commissioner, Workmen's Compensation, Zone-III, Tezpur. In the said petition, the learned Commissioner, Tezpur awarded compensation of Rs. 2,70,520/- Aggrieved against the said order passed by the Commissioner, Workmen's Compensation, Tezpur, the respondent company preferred an appeal before the High Court of Gauhati. Two arguments were raised before the High Court on behalf of the respondent company (appellant in the High Court), (1) that the Commissioner, Workmen's Compensation, Tezpur had no jurisdiction to entertain the claim petition and (2) the death of the deceased did not occur during the course of employment. So far as the first contention of the respondent is concerned, the High Court answered the same against the claimant and held that the Commissioner, Tezpur had no jurisdiction to entertain the claim petition and accordingly it allowed the appeal filed by the respondent herein and set aside the order of the Commissioner, Workmen's Compensation, Tezpur, without going into the second argument. Hence, the present appeal has been preferred by the claimants.

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4. In order to appreciate the controversy involved in the present case whether the Commissioner, Workmen's Compensation, Tezpur had jurisdiction to entertain the claim petition or not, it will be necessary for us to refer to the necessary provisions of the Workmen's Compensation Act, 1923 (hereinafter for short 'The Act'). Section 21(1) of the Act which is relevant for our purpose is reproduced hereunder:-

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A “21. *Venue of proceedings and transfer*:- (1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which-

- B (a) the accident took place which resulted in the injury; or
 (b) the workman or in case of his death, the dependent claiming the compensation ordinarily resides; or
 (c) the employer has his registered office:

C Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the
 D Commissioner having jurisdiction over the area and the State Government concerned:

E Provided further that, where the workman, being the master or a ship or a seaman or the captain or a member of the crew of an aircraft or a workman in a motor vehicle or a Company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the Company is situate, as the case may
 F be.”

G 5. There is no dispute that the accident in the present case took place at Nagaon and hence the Commissioner, Workmen’s Compensation at Nagaon also had jurisdiction to entertain the claim petition. However, in the present case the claim petition was filed at Tezpur because both the
 H claimants, i.e., the father and mother of deceased Md. Rajik Ahmed, started residing at Tezpur with their son-in-law after the death of their son Md. Rajik Ahmed. The question to be decided in the present case is when the accident took place at Nagaon and the claimants were residing at the time of the death of their son at Nagaon but after the death of their son Md. Rajik Ahmed, they had shifted to Tezpur can me Commissioner,

Workmen's Compensation at Tezpur legitimately entertain the claim petition. A

6. Section 21(1)(b) of the Act clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. In our opinion, the expression 'ordinarily resides' means where the person claiming compensation normally resides *at the time of filing the claim petition*. The proviso to Section 21(1) which is also relevant for the present controversy, provides that in case the Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he shall give a notice to the Commissioner having jurisdiction over the area and the state Government concerned. The Amended Section 21 has been specifically introduced in the Act by Amending Act No. 30 of 1995 with effect from 15th September, 1995 in order to benefit and facilitate the claimants. The Statement of Objects and Reasons for the Amendment of the Act, a copy of which has been produced before us, clearly mentions that the amendment has been brought about for benefits of the claimants viz. either the workmen or their dependents. The relevant portion of the Statement of Objects and Reasons, reads as under:- B
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"It is also proposed to introduce provision for facilitating migrant workmen to file compensation claims before the Commissioners having jurisdiction over the area where they or their dependents ordinarily reside. Provision for transfer of compensation from one Commissioner to another has also been made." E

7. The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claim not necessarily at the place where the accident took place but also at the place where they ordinarily reside. This amendment was introduced in the Act in 1995. This was done with a very laudable object, otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of the accident F
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A for filing a claim petition. It may be very expensive for the claimants to pursue in such a claim petition because of the financial and other hardship. It would entail the poor claimant traveling from one place to another for getting compensation. Labour statutes are for the welfare of the workmen. This Court has in the case of *Bharat Singh v. Management of New*

B *Tuberculosis Centre, New Delhi and Ors.*, [1986] 2 SCC, 614 has taken the view that welfare legislation should be given a purposive interpretation safeguarding the rights of the have-nots rather than giving a literal construction. In case of doubt the interpretation in favour of the worker should be preferred. The view which we are taking has been taken

C by a Division Bench of the Orissa High Court in the case of *S.K. Saukat Ali Alias Sekho S.K. v. Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack and Ors.*, (1999) 2 Transport and Accident Cases 638 (Ori) and the Andhra Pradesh High Court in the case of *Noorjahan v. National Insurance Co. Ltd.*

D *Hyderabad and Anr.*, (1999) 3 T.A.C. 276 (AP). Hence, we are of the opinion that the view taken by both these High Courts is correct. A claimant can apply before the Commissioner having jurisdiction over the area where the claimant resides, and it is not always necessary to prefer a claim petition where the accident has taken place. This is for the facility

E of the workmen and advances the cause of welfare of the workmen. Therefore, the view taken by the Gauhati High Court in the impugned order that the claim petition could only be filed at the place where the accident had taken place, cannot be sustained. Section 21(1)(b) read with its proviso is a beneficial legislation for the welfare of the workmen and by

F the above, interpretation, it will advance the cause of the workmen. Therefore, we are of the opinion that the view taken by the Gauhati High Court in the impugned order cannot be sustained and accordingly we set aside the impugned order.

G 8. Now, adverting to the facts of the present case, in the present case, both the claimants, i.e., the father and mother of the deceased have been examined and they appeared in the witness box as PW-1 and PW-2. PW-1, the father of the deceased Md. Rajik Ahmed, has clearly stated in his examination in chief that they are residing with their son-in-law at

H Tezpur for their livelihood. Similarly, the mother of the deceased has stated

on the same lines that they are residing at Tezpur with their son-in-law. A suggestion given to her that they were residing at Nagaon has been emphatically denied by her. The statement of these two witnesses makes it clear that they are presently residing at Tezpur for their livelihood. The statement of both these witnesses was believed by the Commissioner, Workmen's Compenstation, Tezpur. Learned counsel for the respondent submitted that simply by saying that they are residing at Tezpur is not enough to prove their statement but they should produce documents to show that in fact they are residing at Tezpur. We see no reason to agree with the learned counsel for the respondent when there is a clear statement by both the claimants that they started residing at Tezpur after the death of their son. If the respondent wanted to prove that they were deposing falsely, he should have cross-examined these witnesses and challenged their testimony in the witnesses box on this point, which has not been done. In the present case, we are satisfied that the statement of the deceased's father and mother is trustworthy that they are ordinarily residing at Tezpur, and hence the Commissioner, Workmen's Compenstation, Tezpur has jurisdiction to entertain the claim petition. The Commissioner, Tezpur has also given notice to the Commissioner, Workmen's Compensati n, Nagaon as well as the State Government in compliance with the proviso to Section 21(1) of the Act.

9. In these circumstances, we are of the view that the Commissioner, Workmen's Compensation, Tezpur had jurisdiction to entertain the claim petition of the appellants. Accordingly, we set aside the impugned judgment and order of the High Court. Learned counsel for the respondent submitted that the High Court has considered the appeal only on the ground of jurisdiction and not on merits. Learned counsel for the appellant has fairly conceded this fact. Therefore, we remit the matter to the High Court to consider the case of the respondent herein on merits with regard to the second point urged before it and decide the same expeditiously.

10. The appeal is allowed. No order as to costs.

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Appeal allowed.