

HIGH COURT OF GUJARAT

DEPUTY EXECUTIVE ENGINEER & 2

Versus

KHIMA LAKHA RABARI & 1

Date of Decision: 01 August 2017

Citation: 2017 LawSuit(Guj) 1016

Hon'ble Judges: [Z K Saiyed](#)

Case Type: First Appeal

Case No: 643 of 2006

Final Decision: Appeal dismissed

Advocates: [R C Jani](#), [Sureshm Shah](#), [Megha Chitaliya](#), [Mehul S Shah](#)

Z K Saiyed, J.

[1] Being aggrieved and dissatisfied with the judgment and award dated 01.08.2005 passed by the learned Commissioner, Workmen's Compensation Act, Bhuj Kachchh in Workman Compensation (N.F.) No.134 of 1996 (Old Nos.54 of 1990 and 217 of 1993), the appellant employer has filed the present appeal.

[2] The short facts of the present appeal are that, The respondent no.1 employee was working with the appellant herein for the monthly pay of Rs.750/- and on 01.10.1989, when the respondent no.1 was performing his duty and while functioning the filter plant, the respondent no.1 slipped in the machine and he sustained spinal injury, resulted into paralysis of his left leg and accordingly, filed the Claim Petition before the learned Commissioner and the learned Commissioner after appreciating the evidence on record partly allowed the same by awarding Rs.83,013/- along with the interest @ 9% and penalty of Rs.500/- and cost of Rs.700/- to the respondent no.1.

[3] I have heard Ms.Anar Parikh, learned advocate for Mr.R.C.Jani, learned advocate for the appellant and Mr.Vishal Mehta, learned advocate for Mr.Mehul S. Shah, learned advocate for the respondent no.1 and Ms.Megha Chitaliya, learned AGP for the respondent no.2.

[4] Ms.Anar Parikh, learned advocate for the appellant has vehemently contended that despite the disability certificate at Exhibit 43 issued by the doctor which indicates the permanent physical disability sustained to the respondent no.1 is only 30%, the learned Commissioner ought not to have considered the functional disability of the respondent no.1 to be total and 100 %. She has further stated that there is no evidence produced on record by the respondent no.1 to show that he is unable to discharge his duties as an employee. She further reiterated other grounds urged in the appeal memo.

[5] Per contra, Mr.Vishal Mehta, learned advocate for the respondent no.1 submitted that in view of the settled position of law, while considering the disability of the respondent no.1, it is required to be considered the impact of the permanent physical disability assessed by the doctor upon the functioning or the occupation of the respondent no.1 herein and the learned Commissioner, after considering the contents of Exhibit 43 and the deposition of the doctor at Exhibit 42, has specifically held that as the respondent no.1 is not able to do heavy labour work as well as his spinal movement is very painful and terminally restricted considered the functional disability of the respondent no.1 to be 100 %. The learned Commissioner further observed that after the accident in question, the appellant disowned the respondent no.1 from its employment due to the injury sustained by him. In support of his argument, Mr.Vishal Mehta, learned advocate for the respondent no.1 relied upon the judgments rendered by the Hon'ble Supreme Court, reported in AIR 2013 SC 3429(para 42) and 2014 (1) Scale 377 (para 21).

[6] Ms.Megha Chitaliya, learned AGP appearing for the respondent no.2 submitted that since no order has been passed against the respondent no.2, the appropriate order be passed by this Hon'ble Court.

[7] I have gone through the arguments made by the learned advocates for the respective parties and also perused the records and proceedings of the present appeal. Since the learned advocate for the appellant has essentially raised the issue of the disability being considered by the learned Commissioner, I have perused the disability certificate Exhibit 43 along with the oral deposition of the doctor Exhibit 42 who has duly been cross examined by the learned advocate for the appellants before the learned Commissioner and upon perusal of the said documents as well as oral documents, it is clearly established that though the doctor has assessed the permanent physical disability of the respondent no.1 to be 30 %, it is also clear from the said evidences that the respondent no.1 is unable to do any heavy work and he sustained severe spinal injuries resulted into paralysis of his left leg and accordingly, he is not able to perform his duties with the appellant as he was performing prior to the accident in question.

[8] Secondly, on perusal of the record, it is an admitted position that due to the disability sustained by the respondent no.1, the appellant herein disowned him from its employment and therefore, it can be said that even the appellant is also of the opinion that the respondent no.1 was not able to perform his duties efficiently as he was performing prior to the accident in question.

[9] In view of the aforesaid observations and the ration laid down by the Hon'ble Supreme Court in the above referred judgments, the impugned judgment passed by the learned Commissioner does not require any interference at the hands of this Hon'ble Court and accordingly, the present appeal deserves to be dismissed and therefore, the present appeal is dismissed with no order as to costs. R & P be sent back to the trial Court forthwith. Rule is discharged.

[10] In view of the order dtd.20.07.2006 passed by this Hon'ble Court in Civil Application No.7438 of 2006, the amount deposited by the appellant along with the interest and cost shall be disbursed to the respondent no.1 after due verification by the learned Commissioner.

