

lease had been granted and in respect of which this writ petition was filed was from 1st August, 1968, to 31st July, 1970, which period has already passed. Two other writ petitions have been filed by this very Om Parkash for the subsequent period, i.e., Civil Writs 1328 and 1344 of 1971 relating to village Malar. Civil Writ 1572 of 1971 has been filed by Gram Sabha, Peoda, and this writ relates to village Peoda. These three writ petitions, as noticed above, are being accepted. In Civil Writ 2559 of 1969 the possession of the land remained with the petitioner. He had furnished a security of Rs. 58,000 in this case to compensate the State Government in case the decision went against the petitioner and in favour of the State Government. This petition, although, it relates to a period which has already passed, has also to be accepted and the security will stand cancelled.

(39) In view of what has been stated above, Civil Writs 1318, 1319 and 1320 of 1971 are dismissed with costs, while Civil Writs 3575, 3576, 3577, 3640, 3641, 3642 and 3643 of 1970, Civil Writs 10, 1209, 1214, 1215, 1216, 1221, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1317, 1323, 1324, 1328, 1344, 1408, 1416, 1490, 1572, 1616 and 1679 of 1971 and Civil Writ 2559 of 1969 are accepted with costs and the orders of auction quashed.

GURDEV SINGH, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before Gopal Singh, J.

M/S BHIWANI TEXTILE MILLS, BHIWANI,—Appellant.

versus

THE EMPLOYEES STATE INSURANCE CORPORATION,
ETC.,—Respondents.

First Appeal from Order No. 167 of 1970.

May 25, 1971.

Employees' State Insurance Act (XXXIV of 1948)—Sections 51 and 82(2)—Payments of disablement benefit—Liability of the employer for—Whether dependent on the disablement affecting the working or earning capacity of the employee—Finding of fact arrived at by the trial Court—Appeal against—Whether lies to the High Court under section 82(2).

M/s. Bhiwani Textile Mills, Bhiwani v. The Employees State Insurance Corporation, etc. (Gopal Singh, J.)

Held, that the provisions of section 51 of Employees' State Insurance Act, 1948, rendering the employer-management liable are imperative. The liability follows simply because the disablement has occurred and the consideration whether that disablement has affected the working or earning capacity of the employee becomes immaterial. There is no provision in the Act or any regulation showing that in case the working or earning capacity of an employee, who meets with an accident and who has been disabled, the liability of the management is to be subject to the extent to which his working or earning capacity has been impaired. Under section 51 of the Act, the management of the employer is liable to pay the disablement benefit irrespective of the consideration whether that disablement has resulted in loss of either working or earning capacity of the injured employee. (Paras 7 and 8).

Held, that by virtue of section 32(2) of the Act, a finding of fact arrived at by the trial Court is final. According to this section, no appeal lies to the High Court if no substantial question of law is involved in the case. (Para 10)

First Appeal from the order of the Court of Shri S. P. Mittal, Employees' State Insurance Court, Bhiwani, dated the 30th July, 1970 passing a decree against the respondents for the payment of Rs. 2,553.72 paise to the applicant by the respondents and leaving the parties to bear their own costs.

G. C. GARG, ADVOCATE, for the appellant.

K. L. KAPUR, ADVOCATE, for the respondents.

JUDGMENT

GOPAL SINGH, J.—(1) This is an appeal by Messrs. Bhiwani Textile Mills, Bhiwani, against the Employees' State Insurance Corporation and Shri Ganpat Rai Mangla, its Manager. It is directed against the order of Shri S. P. Mittal, Employees' State Insurance Court, Bhiwani dated July 30, 1970.

(2) Facts leading to the appeal are as under :—

(3) Munshi Ram was employed as Reeler in the concern of the appellant. He started working at 10.30 a.m. on May 31, 1965. After having worked for some time, he proceeded towards the side where the Bundle Press was working to dump the reeled yarn. His foot slipped and his right hand got entangled in the moving belt and the pulley and the little finger of his right hand was cut off.

(4) An application under section 75(2)(c) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) was made by respondent No. 1 against the appellant and respondent No. 2, claiming on account of mutilation of the little finger of Munshi Ram, a sum of Rs. 2,553.72, on the ground that the accident resulting in mutilation of the little finger of Munshi Ram occurred as a result of negligence on the part of the appellant in not providing a fencing around the Press and the space where the belt moved. It was pleaded that the Corporation was entitled to claim Rs. 243.72 on account of temporary disablement and the remaining on account of permanent disablement of the employee. In their written statement, the respondents controverted the above allegations and denied that the applicant was entitled to any compensation.

(5) The pleadings between the parties gave rise to the following issues:—

- (1) Whether the Bhiwani Textile Mills is not a juristic person, if so, what is its effect ?
- (2) Whether the application is bad in law for misjoinder of parties?
- (3) Whether the applicant can claim temporary disablement in addition to actual present value of the periodical payments ?
- (4) Whether this Court has jurisdiction to grant interest as claimed ?
- (5) Whether the age of Munshi Ram was 27 years on the date of accident as stated, if not, what was the age at the time of accident ?
- (6) Whether there was any negligence on the part of the respondents ?
- (7) Whether the accident was caused by the moving belt of the Bundle Press Machine as alleged ?
- (8) Whether the Machine was closed on the day of accident, if so, what is its effect ?

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- (9) Whether there was any contravention of section 21 of the Factories Act ?
- (10) Whether the employer has taken due precaution for observation of Rules under the Factories Act?
- (11) What is the correct amount payable to the workman?"

(6) Mr. G. C. Garg, appearing on behalf of the appellant has argued mainly under issues Nos. 3 and 6. He submitted that the injured even after the injury was caused to him, had, barring the period for which he was under treatment, been working with the appellant with unimpaired capacity and that neither his working capacity nor his earning capacity had in any way been affected consequent upon the loss of little finger of his right hand and thus, there is no justification for grant of the disablement benefit on the basis of permanent disablement of the employee. The disablement benefit has been claimed under section 51 of the Act. That section runs as follows:—

51. (1) Subject to the provisions of this Act and the regulations if any, disablement benefit shall be payable—

- (a) to a person who sustains temporary disablement, during the period of such disablement ;
- (b) to a person who sustains permanent partial disablement, during his life ;
- (c) to a person who sustains permanent total disablement, during his life; and
- (d) to a person, in all cases of disablement not falling under sub-clauses (a), (b) or (c) of this sub-section, as may be provided in the regulations.

(2) Disablement benefit shall be paid on the scale and subject to the conditions specified in this behalf in the Second Schedule."

(7) As the language of the section shows, the management of the employer is liable to pay the disablement benefit irrespective of the consideration whether that disablement has resulted in loss of

either working or earning capacity. The management has been rendered liable to pay disablement benefit because of the consequence of disablement, whether temporary or permanent having followed. The liability of the management for disablement benefit is subject to the provisions of the Act other than section 51 and the regulations, if any. I, specifically asked Mr. Garg to point out to any provision of the Act or any regulation showing that in case the working or earning capacity of an employee, who met the accident and who has been disabled, is measurably affected, the liability of the management will be subject to the extent to which his working or earning capacity has been impaired. He frankly conceded that he could not pin-point any provision either under the Act or refer to any regulation providing that the liability under section 51 is subject to any such condition.

(8) The provisions of section 51 rendering the employer-management liable are imperative. The liability follows simply because the disablement has occurred and the consideration whether that disablement has affected the working or earning capacity of the employee becomes immaterial.

(9) After considering the scope of section 51 of the Act, the trial Court came to the conclusion that the plea of want of justification for computation of the disablement benefit because of the working or earning capacity of the employee having not been impaired is irrelevant and immaterial. I have no reason to differ from the view taken by the trial Court. Thus, the argument that the applicant could not claim allowance has no force.

(10) It was urged that the trial Court has not come to the correct conclusion that there was any act of negligence on the part of the management, which could be held to be responsible for the accident and consequently the mutilation of the little finger suffered by the employee, Munshi Ram, who met the accident, and whose little finger was cut off, has not been produced by the appellant. Accident report, dated June 1, 1965, was drawn up. It is Exhibit P.A. According to that report, the accident occurred when Munshi Ram was going to dump the reeled yarn. It is stated that under section 21 of the Factories Act, it was obligatory on the management to provide for fencing around the Bundle Press in order to avoid the occurrence of the accident and that it was because of there being no fencing around that machine that upon the slipping of the foot of

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Munshi Ram, his right hand got entangled between the moving belt and the pulley and the result of mutilation of little finger followed. The trial Court has on consideration of this report and other evidence led in the case come to the conclusion that it was as a result of negligence on the part of the management in not providing for fencing that Munshi Ram met the accident and lost his little finger. That finding is a finding of fact. By virtue of section 82(2) of the Act, a finding of fact arrived at by the trial Court is final. According to sub-section (2) of section 82, no appeal can lie in the High Court, if no substantial question of law is involved in the case. This finding of fact as to whether there was negligence on the part of management in not providing fencing does not involve consideration of any question of law, much less a substantial question of law. The finding of fact arrived at by the trial Court that the accident occurred because of negligence on the part of management in their failure to provide for fencing around the area where the belt moved, is a finding which cannot be re-agitated in the present appeal. Thus, the point that the management could not be held guilty of any act of negligence on their part has no force.

No other point has been argued.

For the reasons recorded above, I disallow the appeal with costs and affirm the order of the Court below.

B. S. G.

REVISIONAL CRIMINAL

Before Bhopinder Singh Dhillon, J.

MOHINDER KAUR,—*Petitioner.*

versus

SARDARA SINGH,—*Respondent.*

Criminal Revision No. 355 of 1971.

May 26, 1971.

Code of Criminal Procedure (Act No. V of 1898)—Section 195—Essential Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 40—Settlement Officer—Whether a "Court" within the meaning of section 195.