Master Contract Services Pte Ltd v Sevugan Kalyanasundaram
[2004] SGHC 278

Case Number : OM 42/2004

Decision Date : 13 December 2004

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Edwin Lee (Rajah and Tann) for the applicant; Seeni Syed Ahamed Kabeer (Syed Yahya and Partners) for the respondent

Parties : Master Contract Services Pte Ltd — Sevugan Kalyanasundaram

Employment Law – Application to vary assessment of compensation for permanent total incapacity by Commissioner of Labour – Whether additional compensation under Third Schedule para 2(3) subject to maximum amount of compensation under para 2(2) – Third Schedule paras 2(1), 2(2), 2(3) Workmen's Compensation Act (Cap 354, 1998 Rev Ed)

13 December 2004

Woo Bih Li J:

Introduction

1 The respondent, Sevugan Kalyanasundaram ("SK"), is a 25-year-old Indian national. He was employed as a construction worker by Goldfield Construction Pte Ltd ("Goldfield"). He started his employment on 5 March 1999 and was paid a basic salary of $23 per day. On 13 January 2003, SK was injured in an accident which arose out of and in the course of his employment. He suffered permanent total incapacity. At that time, Goldfield had a contract with Master Contract Services Pte Ltd ("MC") to carry out waterproofing works at 263 to 274 Canada Road. Under this contract, MC had agreed to provide workmen's compensation cover for Goldfield's workers deployed on the project.

2 Eventually, a Notice of Assessment of Compensation was issued. The amount of compensation stated therein was 125% x $147,000 (maximum) = $183,750. The only issue before the Commissioner of Labour ("the Commissioner") was the application of para 2 of the Third Schedule of the Workmen's Compensation Act (Cap 354, 1998 Rev Ed). Paragraph 2 states:

> 2.—(1) Where permanent total incapacity results from the injury, the amount of compensation shall be a lump sum which shall be obtained by multiplying the monthly earnings of the workman by the appropriate factor in the second column of the following Table according to the age on the next birthday of the workman at the time of the accident as specified in the first column thereof:
>
> [a table of various ages and corresponding multipliers is then set out]
>
> (2) The compensation payable under this paragraph shall in no case be more than $147,000 or be less than $49,000.
>
> (3) Where the injured workman is unable to perform the essential actions of life without the constant attention of another person, additional compensation shall be paid amounting to one quarter of the amount which is otherwise payable under this paragraph.

I will refer to the sub-paragraphs as "2(1)", "2(2)" and "2(3)" respectively.

3 It was not disputed that SK needed the constant attention of another person. The dispute was whether the additional compensation of one-quarter of the amount which would otherwise be payable ("the one-quarter payment") was subject to the maximum sum of $147,000 stated in 2(2) or was in addition to the $147,000. Submissions were made on behalf of SK and MC only.

4 The Commissioner decided that the one-quarter payment was in addition to the $147,000. MC then made the present application to the High Court to set aside or vary the decision of the Commissioner on the ground that only $147,000 was payable. After hearing submissions which, again, were made on behalf of MC and SK only, I dismissed MC's application with costs. I set out my reasons below.

5 I would state at the outset that there is an inherent tension between 2(2) and 2(3). Is 2(2) subject to 2(3) or *vice versa*? Generally, each argument that either counsel raised on the interpretation of the provisions to support his contention could equally be applied to support the contention of the other side.

6 For example, counsel for MC, Mr Edwin Lee, submitted that the words "otherwise payable under this paragraph" in 2(3) must refer to 2(1) only as 2(2) does not set out what is payable but only prescribes the maximum and minimum sum payable. He then argued that as 2(2) refers to what is payable "under this paragraph", it refers to the entire para 2. In short, Mr Lee was suggesting that "paragraph" in 2(3) refers to 2(1) whereas "paragraph" in 2(2) refers to the entire paragraph.

7 In my view that argument could also be applied the other way around. In 2(2) the reference to the "compensation payable under this paragraph" would then refer to 2(1) only and the reference in 2(3) to "otherwise payable under this paragraph" would mean the entire para 2.

8 Counsel for SK, Mr Seeni Syed Ahamed Kabeer, argued that the one-quarter payment under 2(3) was meant to be an additional payment for a worker who suffered permanent total incapacity and who also required the constant attention of another person. However, that argument still did not help. MC did not dispute that there should be an additional payment for such a worker. The question was whether the additional payment was subject to the maximum sum prescribed in 2(2) which currently stands at $147,000.

9 Mr Seeni also argued that 2(3) overrides 2(2) because 2(3) comes after 2(2). While this was a tempting argument to break what appeared to be an impasse in interpretation, I thought it was an unsafe approach to adopt.

10 At the end of the day, the answer was provided from the legislative history of workmen's compensation. That history also enlightened me as to how 2(2) and 2(3) had come to be drafted without any qualification as to which one would be subject to the other.

11 The question of an additional payment for a workman who suffers permanent incapacity and who requires the constant help or attention of another person was already provided for in the Workmen's Compensation Act (Cap 130, 1970 Rev Ed) in 1971. Section 8(b) thereof states:

> Subject to the provisions of this Act the amount of compensation shall be as follows, namely:—
>
> (b) where permanent total disablement results from the injury —

(i) in the case of an adult who has completed his eighteenth year, a lump sum equal to forty-eight months earnings or nine thousand six hundred dollars, whichever is the less;

(ii) in the case of any other adult, a lump sum equal to seventy-two months earnings or nine thousand six hundred dollars, whichever is the less; and

(iii) in the case of a minor, a lump sum equal to ninety-six months earnings or nine thousand six hundred dollars, whichever is the less:

Provided that where an injury results in permanent total disablement of such a nature that the injured workman must have the constant help of another person, additional compensation shall be paid amounting to one quarter of the amount which is otherwise payable under this paragraph; …

As can be seen, the one-quarter compensation in the proviso to s 8(b) was clearly in addition to whatever was payable under s 8(b)(i), (ii) or (iii).

12 In 1975, a new Act was enacted for workmen's compensation. The Third Schedule of the Workmen's Compensation Bill (No 5 of 1975), which was eventually passed as the Workmen's Compensation Act (Act No 25 of 1975) in 1975, states:

2.—(1) Where permanent total incapacity results from the injury the amount of compensation shall be —

(a) in the case of a workman who is below forty years of age at the time of the accident, a lump sum of forty-five thousand dollars or equal to twelve years' earnings, whichever is the less;

(b) in the case of a workman who is forty years of age and above but below fifty years of age at the time of the accident, a lump sum of forty-five thousand dollars or equal to ten years' earnings, whichever is the less; and

(c) in the case of a workman who is fifty years of age and above at the time of the accident, a lump sum of forty-five thousand dollars or equal to eight years' earnings, whichever is the less.

(2) The amount of compensation under this paragraph shall in no case be less than the amount which would have been payable if it had been determined in accordance with sub-paragraph (a) of paragraph 1.

(3) Where the injured workman is unable to perform the essential actions of life without the constant attention of another person, additional compensation shall be paid amounting to one quarter of the amount which is otherwise payable under this paragraph.

13 As can be seen, 2(2) of that Bill had a formula for the minimum payment but there was no maximum sum stated in 2(2). Accordingly, the one-quarter payment referred to in 2(3) was clearly in addition to whatever the injured workman was supposed to receive under 2(1)(a), (b) or (c) if the injured workman required the constant attention of another person.

14 It is significant that the Explanatory Statement to this Bill states, *inter alia*:

> Clause 7 which is to be read with the Third Schedule provides for increased compensation to an injured workman. The maximum compensation payable is being raised to thirty-five thousand dollars in the case of a fatal accident and forty-five thousand dollars in the case of permanent total incapacity. The multiplying factors which are used to work out the actual compensation have also been increased and will result in greater monetary benefits being obtained by an injured workman.

15 In the Explanatory Statement, the phrase "maximum compensation" was used to refer to the maximum sum of $45,000 provided under 2(1)(a), (b) or (c) under which either $45,000 or a lower sum was payable. As I have mentioned, no maximum sum was stated in 2(2) then. Taking into account 2(3), it was clear at that time that the one-quarter payment was in addition to the maximum sum of $45,000 under 2(1). In a way, the phrase "maximum compensation" in the Explanatory Statement was a misnomer as it did not include the one-quarter payment.

16 In 1980, the Third Schedule of the Workmen's Compensation Act was amended. As regards para 2, only 2(1) and 2(2) were amended. The new 2(1) provided a table in the same format as the current 2(1) but with different multipliers. The new 2(2) stated:

> The compensation payable under this paragraph shall in no case *exceed sixty thousand dollars or* be less than twenty thousand dollars. [emphasis added]

17 A number of changes were effected by the amendments to 2(1) and 2(2). Firstly, the formula in the previous 2(1) which provided for the payment of the lesser of two sums was deleted. Instead, it was substituted by a maximum sum stated in 2(2). It will be recalled that prior to this amendment, there was no maximum sum stated in 2(2).

18 Secondly, the maximum sum was increased from $45,000 to $60,000.

19 Thirdly, the new 2(2) provided for a new minimum sum of $20,000.

20 For present purposes, it is the first change mentioned above that was significant. Although the old 2(1) actually had a maximum sum of $45,000, the old 2(1) was not drafted as such. Hence there was no ambiguity between the old 2(1) and the old 2(3). When the $45,000 cap was replaced by $60,000 and with different words in 2(2), an unintended ambiguity arose because of 2(3). When 2(2) and 2(3) were read together it was not clear which one was subject to the other. The draftsman probably did not realise the ambiguity because the old 2(3) was not changed and the draftsman probably did not consider the new para 2 in its entirety.

21 Mr Lee relied on a speech made on 28 November 1980 in Parliament by Mr Sia Kah Hui who was the Acting Minister for Labour where the Minister said:

> Clause 8 of the Bill seeks to raise the maximum compensation for … injury resulting in permanent total incapacity from $45,000 to $60,000.

Mr Lee submitted that the reference to the "maximum compensation" was inclusive of the one-quarter payment. I disagreed. As I have mentioned, when the phrase "maximum compensation" was used in the Explanatory Statement for the new 1975 Act, it clearly meant the maximum sum payable without including the one-quarter payment. Therefore the phrase "maximum compensation" did not necessarily include the one-quarter payment.

22 More importantly, prior to the 1980 amendments, the cap was only in respect of the compensation payable under 2(1). The one-quarter payment had hitherto been an additional payment without a cap for a worker who suffered total incapacity and who required the constant attention of another person. If the additional payment was supposed to be subject to the maximum sum of $60,000 in 1980, the Minister's speech would have mentioned this change as it was significant. There was no mention of such a change. I was also informed by Mr Lee that there was no mention of such a change in the Explanatory Statement to the 1980 Bill.

23 In the circumstances, I was of the view that the one-quarter payment remained a payment in addition to the then maximum sum of $60,000.

24 I was informed by Mr Lee that, since then, there have been further changes to the maximum sum culminating in the current maximum sum of $147,000. However, the terminology of 2(2) and 2(3) has remained the same since 1980. Accordingly, I was of the view that the one-quarter payment in 2(3) is a payment in addition to the current maximum sum of $147,000 and I dismissed MC's application with costs.

25 There is one other point I should mention. In the course of arguments, Mr Lee had referred to an extract from a booklet entitled *Guide to Workmen's Compensation Act* ("the Guide") which was a publication of the Workmen's Compensation Department (now Work Injury Compensation Department) of the Ministry of Labour (now Ministry of Manpower). The Guide Mr Lee referred me to was the Fourth Edition (1996). Page 22 thereof states:

> **Amounts Payable**
>
> (i) For total permanent incapacity, the minimum compensation payable is $49,000 and the maximum is $147,000.

Mr Lee submitted that this suggested that the $147,000 was inclusive of the one-quarter payment. The one-quarter payment was mentioned in p 21 of the Guide before the above statement was mentioned in p 22.

26 Although s 9(A)(2) of the Interpretation Act (Cap 1, 2002 Rev Ed) is arguably wide enough to allow me to refer to a guide published by a government department to assist me in the interpretation of 2(2) and 2(3) which were ambiguous, the Guide itself was also ambiguous. Furthermore, although an elaboration was given in p 22 of the calculation of the payable compensation, that elaboration did not clarify whether it applied to a situation where the one-quarter payment was to be made.

27 As it turned out, after I had asked for the entire Guide to be produced to me, Mr Seeni obtained a Sixth Edition (2001) which had the same pages, pp 21 and 22, as the Fourth Edition. However, the foreword of the Sixth Edition has a disclaimer which says, "As a guide this booklet has no legal standing."

28 Mr Seeni also obtained a pamphlet entitled *What You Need To Know About Workmen's Compensation* which was a publication of the Work Injury Compensation Department, Ministry of Manpower. However, it too did not make it clear whether the one-quarter payment was subject to the maximum sum of $147,000 for a worker who suffers permanent total incapacity and who requires the constant attention of another person. In any event, the pamphlet also had a similar disclaimer as the Guide which disclaimer was found near the end of the pamphlet.

Application dismissed with costs.

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