

CHARLIS SILVA
v.
ARIYADASA

COURT OF APPEAL

L. H. DE ALWIS, J. AND H. A. G. DE SILVA, J.

C. A. 4/79.

W.C. CASE No. 03/P65/77

BRA/369.

26 AND 27 JANUARY 1983.

Power of Attorney — Workmen's Compensation — Application by dependants of deceased workman through attorney — Is Commissioner a civil court? — Validity of power of attorney — Order appointing legal representative over minor — Regulation 12 of Regulations made by Minister.

The workman M. P. Piyadasa de Silva died in a motor accident. P. B. Sumanawathie was his mistress she being married to one Ackman. Piyadasa had 3 children by Sumanawathie viz Gamini Jayarama, Lakshman Jayarama and Priyanthie Jayarama. Albert de Silva was Sumanawathie's father, Jane nona was the deceased workman Piyadasa's mother and Padmawathie was his sister. The application for Workmen's Compensation was made by Ariyadasa de Silva, a brother of the deceased workman claiming to represent the abovenamed persons on a power of attorney executed in his favour by them.

Held —

- (1) The power of attorney must be construed strictly. The power was a general one but did not provide Ariyadasa with authority specifically to institute proceedings in the Workmen's Compensation Tribunal. Hence the power of attorney did not empower Ariyadasa to claim compensation on behalf of the dependants in proceedings before the Commissioner of Workmen's Compensation.
- (2) The Commissioner is not a civil court though some powers of a Civil Court are conferred on him.
- (3) One of the executants of the power was Priyanthie a minor 9 years old and she could not have executed a Power of Attorney.
- (4) The Commissioner appointed Sumanawathie as legal representative of the minor Priyanthie. This was valid though done after proceedings were instituted.
- (5) Sumanawathie was only the mistress of the deceased workman and she was in fact married to one Ackman. The children born to Sumanawathie will be presumed to be children born of lawful wedlock. Hence it was wrong to

hold that Priyanthie was an illegitimate child of the deceased workman and she did not come within the definition of dependant of the deceased workman.

Cases referred to :

1. *Bastian Pillai v. Anna Fernando* 54 NLR 113
2. *Clarice Fonseka v. Winifred Perera* 59 NLR 364

APPEAL from order of the Commissioner of Workmen's Compensation.

H. W. Jayewardene, Q.C. with *N. R. M. Daluwatte* and *C. R. de Alwis* for respondent-appellant.

K. Shanmugalingam for applicant-respondent.

Cur. adv. vult

March 11, 1983

H. A. G. DE SILVA, J.

This is an appeal from the Order of the Deputy Commissioner of Workmen's Compensation directing that the Respondent-Appellant deposit a sum of Rs. 11,200/- as compensation and a further sum of Rs. 315/- as costs.

The Applicant-Respondent had instituted an application before the Commissioner of Workmen's Compensation for compensation on behalf of the dependants of one M. P. Piyadasa de Silva, the deceased workman. The application alleged that the dependants of the deceased workman were his widow P. B. Sumanawathie de Silva, his three children M. P. Gamini Jayarama, M. P. Lakshman Jayarama, M. P. Priyanthie Jayarama, B. P. Albert de Silva, the father of M. P. Sumanawathie de Silva, W. A. Jane Nona the mother of the deceased workman and Padmawathie his sister.

At the inquiry the following facts were admitted by the Appellant-Respondent :—

- (1) that the deceased was a workman within the meaning of the Ordinance ;
- (2) that the monthly salary of the deceased was Rs. 400/-
- (3) that the deceased suffered personal injury in a motor car accident on 5.4.1977 and died on the same day.

The case went to inquiry on the following issues :—

- (1) Is the Applicant entitled in law to claim compensation from the Respondent Company on behalf of the dependants of the deceased M. P. Piyadasa?
- (2) Are there dependants of the deceased ?
- (3) Did the death of the deceased on 5.4.77 result from an accident arising out of and in the course of his employment under the Respondent Company?

The Deputy Commissioner who held the inquiry answered all three issues in the affirmative and with regard to the second issue further held that the dependants were (a) M. P. Priyanthie Jayarama — the illegitimate minor daughter of the deceased and (b) W. Jane Nona — the widowed mother of the deceased and (c) Padmawathie, the unmarried sister of the deceased. He further ordered that compensation in a sum of Rs. 11,200/- be deposited with the Commissioner of Workmen's Compensation and awarded Rs. 315/- as costs of the inquiry.

The application to the Commissioner of Workmen's Compensation was made by one M. P. Ariyadasa de Silva, said to be a brother of the deceased workman, for and on behalf of the alleged dependants.

Section 3 of the Workmen's Compensation Ordinance (Cap: 139), hereafter referred to as the Ordinance, deals with the

employer's liability to pay compensation for personal injury suffered by a workman. Section 6 deals with the amount of such compensation while Section 10 enumerates the persons entitled to compensation. Section 16 lays down the procedures for recovery of compensation, the required notice and the claim. Part VII of the Ordinance relates to the proceedings before the Commissioner in regard to claims for compensation. Section 36 of the Ordinance states that —

“Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by a representative authorized in writing by such person and approved by the Commissioner.”

The Applicant M. P. Ariyadasa de Silva filed this application on the strength of a Power of Attorney granted to him by the alleged dependants of the deceased workman. This Power of Attorney which was produced marked “A2” is a general Power of Attorney and learned Counsel for the Appellant submits it does not authorize him to make this application before the Commissioner.

A perusal of “A2” shows that the recital which states the specific matters for which the Power of Attorney has been executed is to “manage and transact all our business and affairs in the said Sri Lanka”. It is contended that the words “affairs” in the recital must be construed ‘*eiusdem generis*’ with the words “business” and would not cover the making of an application to the Commissioner of Workmen's Compensation for and on behalf of the executants. The general powers recited in the body of ‘A2’, takes in the gamut of all types of business and financial activity that an individual may indulge in and in particular “to ask, demand, sue for, recover and receive of, and from all persons

liable now or hereafter to pay . . . all sums and sums of money, debts, legacies . . . whatsoever now owing, payable or belonging or which shall or may at any time hereafter be due, owing and payable coming or belonging to us and on payment or delivery hereof to give, sign and execute release, receipts and other discharges for the same respectively . . . and on non-payment or non-delivery thereof or any part thereof, to commence, carry on and prosecute any action or actions, suit or suits or other proceedings whatsoever before any Court or Courts in the said Island for receiving and compelling the payment or delivery thereof" ; — "to compromise disputes any difference and to refer matters to arbitrators and sign and execute all necessary bonds submissions and references therefor and to enforce any award"; — "to appear for us before any Court or Courts in Sri Lanka either as Plaintiff, Defendant or intervenient and to sign and grant all necessary proxy or proxies to any Attorneys-at-Law of the said Courts."

In *Bastian Pillai v. Anna Fernando* (1) — it was held that "a Power of Attorney must be construed strictly and that the special terms in the recitals controlled the general words in the operative part".

Further learned Counsel for the Appellant submitted that in any event, the Commissioner of Workmen's Compensation is not a "Court". Section 35 of the Ordinance deals with the powers of the Commissioner and states that "A Commissioner shall have all the powers of a civil Court under the Civil Procedure Code, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects; and a Commissioner shall be deemed to be a Civil Court for all the purposes of Section 417 and Chapter XXXIV of the Criminal Procedure Code".

Section 5 of the Civil Procedure Code states that "Civil Courts" means a Court in which a Civil action may be proved and defines "Court" as meaning a Judge empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

The word 'Judge' has been defined to mean the presiding officer of a Court, and includes Judges of the Supreme Court, District Court etc.

A construction of Section 35 of the Ordinance shows that prima facie a Commissioner is not a "Civil Court" but has the powers of a Civil Court for certain purposes. The section in its latter portion deems a Commissioner to be a Civil Court for purposes of Section 147 of the Civil Procedure Code, for the trial of issues of law first and Chapter XXXIV of the Criminal Procedure Code which deals with proceedings in cases of certain offences affecting the administration of justice.

Learned Counsel for the Respondent contended that under Section 54 (2) (f) of the Ordinance which empowered the Minister to make regulation in respect of or all or any of the following matters namely :— (f) "for representation in proceedings before Commissioners of parties who are minors or unable to make an appearance", regulation 30 (published in Subsidiary Legislation of Ceylon Vol: II (1956) makes the provisions of Chapters VII, VIII, IX, XIII, XVI, XVII, XVIII, and XXVI of the Civil Procedure Code applicable to proceedings before the Commissioner. While these Chapters deal with matters such as Mode of Institution of Action ; the Issue and Service of Summons ; Appearance and Answer ; Consequences and Cure (when permissible) of Default in Appearing or Pleading ; Discovery, Inspection, Production, Impounding and Return of Documents; Witness ; Adjournments ; Withdrawal and Adjustment of Actions ; Chapter V dealing with recognized Agents and Proctors is not included.

In my view a strict construction of the Power of Attorney A2, did not empower the applicant to make the application before the Commissioner of Workmen's Compensation for and on behalf of the alleged dependants.

Further one of the alleged dependants viz: M. P. Priyanthie Jayarama who is one of the executants of the Power of Attorney A2 was a minor on 27th February 1978 the day on which A2 was

executed. According to the extract of birth register A, she was born on 15.01.1969 i.e. she was only nine years of age and as such she could not have executed the Power of Attorney A2. The Power of Attorney purported to have been granted by Priyanthie Jayarama to the applicant would be invalid.

The next submission of learned Counsel for the Appellant was that M.P. Sumanawathie de Silva, the mother was appointed by the Deputy Commissioner as legal representative on 13.02.1979 during the course of the proceedings and long after the application for compensation had been filed by the Applicant. It was his contention that the appointment of the legal representative for the minor Priyanthie Jayarama should have preceded the filing of the application.

Regulation 36 states that — “where any party to a proceedings is under the age of 15 years, the Commissioner shall appoint some suitable person, who consents to the appointment, to represent such party for the purposes of the proceedings”.

There is nothing in this regulation which limits the appointment of a representative for a party under 15 years of age, to a stage before the application is made. On the other hand the fact that the word used is “proceedings” would indicate that the proper time for the appointment of a representative is after the application has been filed and at any time before the conclusion of the inquiry. It seems to me therefore that the appointment of Sumanawathie de Silva as the legal representative for Priyanthie Jayarama is valid.

The last matter that was raised by learned Counsel for the Appellant is that the Deputy Commissioner was wrong in holding that Priyanthie was the illegitimate child of the deceased workman.

Learned Counsel submitted that as Sumanawathie de Silva was married to one Gardige Punchi Hewage Ackman Silva and had not obtained a divorce from him, she should not be permitted to bastardize her own child. He referred to the presumption under

Section 112 of the Evidence Ordinance which states that —

“the fact that any person was born during the continuance of a valid marriage between his mother and any man the mother remaining unmarried shall be conclusive proof that such person is the legitimate son of that man, unless it can be shown that that man had no access to the mother at any time when such person could have been begotten or that he was impotent”.

According to Sumanawathie’s evidence she did not know where Ackman Silva was. She had been living with the deceased workman as husband and wife since 1948 and she has had nothing to do with her legal husband since 1948. They lived in different places and Ackman Silva has grown up children by someone else.

Learned Counsel cited the case of *Clarice Fonseka v. Winifred Perera* (2) which held inter alia that —

“the presumption arising under Section 112 of the Evidence Ordinance of the legitimacy of a child born in lawful wedlock can be rebutted only by such evidence as excludes any reasonable doubt, and that entries in the birth register were not per se sufficient to rebut the presumption”.

It further held that entries in a Birth Certificate are only prima facie evidence of date of birth, place of birth and the identity of the person registering the birth.

Though the extract of the birth register A1 gives the name of the father of Priyanthie Jayarama as that of the deceased workman, no evidence of non-access or impotency of the legal husband of Sumanawathie has been led to rebut the presumption of the legitimacy of Priyanthie Jayarama who has been born during the subsistence of the marriage of her mother with Ackman Silva. It would therefore appear that Priyanthie Jayarama cannot be regarded as the illegitimate daughter of the deceased workman and hence is not a dependant coming within the definition of “dependant” in Section 2 of the Ordinance.

For the reasons I have given in my judgment the Appellant is entitled to succeed and I therefore allow the appeal and set aside

The Order of the Deputy Commissioner. The Appellant will be entitled to costs of this appeal fixed at Rs. 525/- as well as the costs of inquiry before the Deputy Commissioner.

L. H. DE ALWIS J. — 1 agree

Appeal allowed
