

Executive Engineer, Electrical Division and anr. Vs. Para Hembram and ors.

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SooperKanoon Citation : sooperkanoon.com/533306

Court : Orissa

Decided On : Oct-06-2004

Reported in : I(2005)ACC279; 98(2004)CLT712; [2005(104)FLR283]

Judge : M.M. Das, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3(1)

Appeal No. : Miscellaneous Appeal No. 10 of 2001

Appellant : Executive Engineer, Electrical Division and anr.

Respondent : Para Hembram and ors.

Advocate for Def. : Somanath Mishra and Girija Tripathy

Advocate for Pet/Ap. : B.K. Nayak and J.K. Khuntia

Disposition : Appeal dismissed

Judgement :

M.M. Das, J.

1. This is an appeal under Section 30 of the Workman's Compensation Act, 1923 (hereinafter referred to as the 'Act') preferred by the employer against the judgment and award passed in WC Case No. 23 of 1999 by the Commissioner for Workmen's Compensation and Asst. Labour Commissioner, Balasore. The

substantial question of law which has been raised in this case is whether the death of the deceased can be said to be 'arising out of and in course of his employment' as used in Section 3(1) of the Act.

2. In order to appreciate the contentions of the rival parties, it would be necessary to briefly state the facts of the present case. One Madan Hembrum who was employed as a Line man under Opp. Party No. 1 being exposed to electric shock on 30.10.95 and carried to Jaleswarpur PHC for treatment, expired on 31.10.95. The respondents who are the wife and children of the said deceased-workman filed WC Case No. 23 of 1999 claiming compensation under the Act. On receiving notice the appellants who were opp. parties in the Court below filed their written statement admitting the fact that the deceased was working as a Line helper under Opp. Party No. 1 on 30.10.95. It has been further admitted in the written statement that the deceased while working as a Line helper under the direct control of S.D.O. (Electrical), Bhogarai under Balasore Electrical Division along with others under the supervision of the concerned Line man was engaged for cutting trees inside the village Jhatibani near Chandaneswar and while he was on duty he fell down from the pole and ultimately died. It has been further pleaded in the written statement that the deceased climbed up to the Sub-Station D.P. at jhatibani for cutting the branches of the trees which were touching the L.T. line of the Sub-Station and thus he fell down from the Sub-Station pole by his own negligence either due to slip of his hand or loosing his balance and sustained head injuries.

3. It transpires from the impugned judgment that the Commissioner of Workmen's Compensation, basing on the pleadings of the parties, framed four issues and came to hold that the deceased was a workman as defined under the Act and met with an accidental death which arose out of and in course of his employment. He further held that the claimants are entitled to a compensation of Rs. 1,84,170/- and directed the appellant No. 1 to deposit the said amount of compensation within 30 days from the date of the order.

4. Mr. Nayak, Learned Counsel for the appellants, submitted that the deceased being a Line helper was not authorized to climb the electric pole and as such it cannot be said that the death of the deceased arose out of and in course of his

employment. He further submitted that the deceased having died due to his own negligence, he is not entitled to any compensation under the Act.

5. Mr. Somanath Mishra, appearing on behalf of the claimants on the contrary contended that the appellants having admitted before the Commissioner that the deceased was under the employment of Appellant No. 1 as a Line man and having further admitted that he was engaged to cut branches of the trees on the fateful day which were touching the L.T. line of the Sub-Station, it is not open for the appellants to take a contrary plea that the death of the deceased did not arise out of and in course of his employment. He further submitted that in a case under the Workmen Compensation Act if the death is accidental in nature and occurred while the workman he was performing his duty in course of his employment, the employer is liable to pay the compensation.

Section 3(1) of the Act is extracted herein below :

'3. Employer's liability for compensation : (1) if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable :

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to :

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the

safety of workman.'

In the case of The General superintendent, Talcher Thermal Station v. Smt. Bijuli Naik, 76 (1993) CLT 699 Hon'ble Justice G.B. Patnaik, as he then was, while considering a similar question has held thus :

'The pre-conditions for attracting the provisions of Section 3(1) of the Act are that death or injury must be caused to a workman; the said injury must have been caused by accident; and the accident must have arisen out of and in course of his employment. A casual connection between the employment and the injury caused by the accident must exist. If after looking at the entire facts, a fair inference can be drawn that the employment caused the injury, then the employer would be liable to pay the compensation. The liability under Section 3(1) of the Act would accrue, if it is established that an injury has been caused to a workman and the accident arose out of and in course of his employment.'

6. In the said case the workman while entering the factory premises to join the general shift at 8.00 A.M. felt uneasy near the factory gate and was shifted to the hospital where he expired. The death was caused due to Coronary Thrombosis and it was pleaded by the employer that the said workman did not suffer from any injury during and in course of his employment and the accident did not take place during and in course of his employment and, therefore, the employer is not liable to pay any compensation. After analyzing various judicial pronouncements of different High Court it was held that :

(i) there must be a casual connection between the injury and the accident and the work done in the course of employment;

(ii) the onus is upon the applicant to show that it was the work and the resulting strain which contributed to, or aggravated, the injury;

(iii) it is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and

(iv) where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed.

7. This Court ultimately in the facts of the said case held that the death of the said workman resulting from Coronary Thrombosis had a close connection with his strenuous work in the factory and on such finding the award passed by the Commissioner was confirmed.

8. Applying the above principles of law to the facts of the present case and the admission of the appellants in their written statement, the only conclusion that can be drawn is that the deceased-workman died in an accident which had a direct nexus with the work which he was doing in course of his employment. The claimants have discharged the onus in showing that the death was caused out of an accident, which arose out of and in course of employment. I, therefore, do not find any reason to interfere with the impugned judgment and award. It is made clear that the appellants have not challenged the quantum of compensation awarded.

9. The appeal is, therefore, dismissed, but in the circumstances without any costs. As it appears that by Order dated 7.5.2002 this Court directed release of 50% of the award in favour of the claimant respondents by the Commissioner, in the event the same is already disbursed, the balance amount of the award lying in deposit with the Commissioner along with the accrued interest shall be disbursed to the claimant-respondents.