

Gubaksh Singh Vs. Dhanni Devi

Gubaksh Singh Vs. Dhanni Devi

SooperKanoon Citation : sooperkanoon.com/690605

Court : Delhi

Decided On : Mar-13-1980

Reported in : 1980RLR397

Judge : D.K. Kapur and; Yogeshwar Dayal, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 2

Appeal No. : Letter Patent Appeal No. 93 of 1973

Appellant : Gubaksh Singh

Respondent : Dhanni Devi

Advocate for Pet/Ap. : B.S. Charya and; M.K. Kaul, Advs

Judgement :

D.K. Kapur, J.

(1) The present appeal under Clause 10 of the Letters Patent arises from a claim for compensation made by the legal representatives of one Gokal Ram on account of an accident that occurred on 25th March, 1964. The Commissioner acting under the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act) dismissed the application on 20th October, 1966, principally on the ground that Gokal Ram (deceased) was a sub-contractor and hence not a workman within the meaning of the Act. On appeal u/s 30, the learned Single Judge came to the

conclusion that Gokal Ram was a workman within the meaning of the Act and also, he did die as a result of an accident arising out of and in the course of his employment. The case was remanded to the Commissioner for determining the quantum of compensation,

(2) In appeal, the appellant contends that the deceased was not a workman within the meaning of the Act and the Commissioner was right in rejecting the claim for compensation. The relevant facts show that Gurbaksh Singh, taken a contract to construct some D.T.U. quarters. In connection with the white washing to be done in those quarters, Gokal Ram deceased had been appointed for doing that job on certain terms. He was to be paid Rs. 6.00 per one thousand sq. ft. of completed work which consisted of the application of three coats. The cost of the material supplied to him for doing this work was to be adjusted against the payment. While doing this work, on 25th March 1964, the platform on which Gokal Ram was working collapsed so that he fell down and died. Keeping in view the terms on which Gokal Ram was working the Commissioner came to the conclusion that as a fixed monthly wage was not paid, Gokal Ram was not a workman. The learned Single Judge held that even if piece-rate payment was made to Gokal Ram, he could still be a workman within the meaning of the Act.

(3) It was also held on the facts of the case that though the white-washing had to be done by Gokal Ram, the material for use in the white-washing process was to be supplied to Gokal Ram by the contractor, i.e., the present appellant and the material was to be utilised under the supervision of the contractor. The learned Single Judge held that if Gurbaksh Singh exercised control and supervision over the method of doing the work then the relationship of master and servant existed. The judgment of the Supreme Court in *Dharangadhra Chemical Works Ltd. V. State* : (1957)ILLJ477SC was relied upon.

(4) In para 4, definition of 'workman' given in Section 2(n) is reproduced]. The operative part of this definition shows that any person who is employed for the purposes of the employer's trade or business is a workman provided his monthly wages do not exceed rupees five hundred. (This is how the Act stood at the time of the accident). The definition also shows that there are several requirements for

a person being classified as a workman. Firstly, he should be employed; secondly his employment should not be of a casual nature ; thirdly he should be employed for the purpose of the employer's trade or business ; fourthly he should be employed on monthly wages which do not exceed five hundred, and lastly, the capacity in which he worked should be in the list set out in Schedule II.

(5) Leaving aside the question whether the deceased was employed which will be dealt with later, it is first to be noticed that the list in Schedule II includes persons employed for the construction, maintenance or repair of building, etc., which is covered by sub-clause (viii). So assuming that Gokal Ram was employed for the purpose of white-washing, etc., he would be working in a capacity specified in Schedule II. No case was made out that the employment was of a casual nature nor can it be denied that he was working for a purpose connected with the trade and business of Gurbaksh Singh. So, the only two questions which required adjudication were (a) whether Gokal Ram was employed, and (b) whether his monthly wages exceed rupees five hundred.

(6) As far as the contention concerning the quantum of wage is concerned, it does not appear that there was any challenge to the quantum, but it was urged before us that it cannot be said that as a piece-rate worker, the deceased had a monthly wage of less than Rs. 500.00. It was also contended that the monthly wage of a piece-rate worker could be determined ; but this contention loses all force when it is examined u/s 5 of the Act which reads : (S. 5 is then reproduced). 6. This provision shows that even a piece- , rate worker has a monthly wage and for the purposes of determining the rate, several tests have been given. It has been brought to our notice that after remand determination has been made by the Commissioner that the 'monthly wage' of the deceased was Rs 100.00 per month. Though we have not had the advantage of seeing that order, it would obviously appear that the rate of wages must have been computed u/s 5. Even if the wage cannot be determined specifically, sub- clause (b) and (c) of the Section show that a workman employed for similar work in the same locality could determine the rate of wages- payable for such worker. Some other tests to be employed for determining the monthly wage are also set out.

(7) The provisions of Section 5 show that if a person has worked for twelve months, then the wage is determined by taking one-twelfth of the total wage. If he has worked for less than one month, then sub-clause (b) and (c) come into operation. It appears from this provision that practically every case of a person who has worked for a short time or has worked as a piece-rate worker can be examined and the specific wage determined.

(8) Now it is necessary to examine the main question which is whether the deceased was an employee of the appellant. Learned counsel for the appellant has tried to make a distinction between a contract of employment and a contract which is in the nature of a sub-contract for doing work. It appears that the judgment of the Supreme Court in *Dharangdhra Ch. Wks v. State* : (1957)ILLJ477SC, which has been relied upon, fully covers the present case. In that case, M/s. Dharangdhra Chemical Works Ltd., was a manufacturer of salt manufactured in a particular way. Agarias were employed for working on these salt works. They were practically independent in what they did; they were given certain plots described as pattas in which rain water was stored in wells prepared by them. When brine had formed due to the action of water on the saline surface the same was withdrawn for preparing salt under the supervision of a Salt Superintendent. In an industrial dispute, the question arose whether these persons could be described as workers; it was held by the Court that they were workers.

(9) It has been urged by learned counsel for the appellant that this conclusion was on the specific terminology of Section 2(s) of the Industrial Disputes Act, 1947, but this is not so. The test used by the Supreme Court in determining whether the agarias were workmen or not was derived from a number of English judgments, i.e., *Cassidy V. Ministry of Health*, 1951-2 Kb 343, *Short V. J& W Render son Ltd.* 1946-62 Tlr 443, and *Halsbury's Laws of England*, Hailshara edition. Vol. 22 at page 112. The Court stated the principle in the following terms : The principle which emerges from these authorities is that the prime facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in

Mersey Docks and Harbour Board V. Coggins & Griffith (Liverpool Ltd. 1907-1 AIC; (E). The proper test is whether or not the hirer had authority to control the manner or execution of the act in question.' Applying this test to the facts of the case before the Supreme Court, it was held that the agarias under consideration were not independent contractors but workmen. It was observed: 'in the instant case the agarias are professional labourers. They themselves personally work along with the members of their families in the production of sail and would, therefore, be workmen. The fact that they are free to engage others to assist them and pay for them would not, in view of the above authorities, affect their status as workmen.' The Court approved the observations of Crompton J., in Solder V. Hcnior, 119 Er 209 to the following effect :

'THE test here is, whether the defendant retained the power of controlling the work. No distinction can be drawn from the circumstances of the man being employed at so much a day or by the job. I think that here the relation was that of contractor and contractee.'

(10) Applying this statement of the law to the present case, the learned Single Judge has rightly held that Gokal Ram was not an independent contractor and was a workman paid on a job basis. He was doing whitewashing as part and parcel of the contract undertaken by Gurbaksh Singh. The material for doing the work was supplied by the contractor, the work was done in accordance with the requirements of the contract under the supervision of the employer. The case of the agarias in the Dharangadhra Chemical Works' case seems to be exactly the same as is the case of Gokal Ram.

(11) The only case cited before us to show that Gokal Ram was not a workman is Malwa Sugar Factory V. Mst. Bhagwan Kaur 1971 (23) F.L.R. 266, in which it was held that a sub-contractor was not a workman. On an examination of the facts of that case it clearly appears that the same is distinguishable. Tarsem Lal was a contractor engaged by the Malwa Sugar Factory on certain terms for pushing loaded wagons of sugar-cane and pushing them back to the railway limits after the wagons had been emptied. Seven persons had taken a sub-contract from Tarsem Lal. The Court held that it was the case of the applicants themselves that they

were subcontractors under a contract and hence, they could not be described as workmen. it is obvious from the facts of that case that the deceased Nikka Singh was a joint subcontractor under Tarsem La He was not, therefore, a workman of Malwa Sugar Factory which had given a contract to Tarsem Lal So this case is of no help to the appellants.

(12) From these conclusions, it would follow that it has rightly been held in the present case that the deceased Gokal Ram was employed by the appellant and was, therefore, a workman. The other tests under the Section are all satisfied particularly now as the monthly wage of the deceased had been computed at Rs. 100.00. There is no doubt that the deceased died in the course of his employment on account of the collapse of the platform on which he was working. So, this appeal has to fail and is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com