

Mangoo Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-04-1999

Reported in : (2000)ILLJ140Raj

Judge : Amaresh Ku. Singh, J.

Acts : Workmen's Compensation Act, 1923 - Sections 2 and 12

Appeal No. : S.B.C.M.A. No. 24/1984

Appellant : Mangoo

Respondent : State of Rajasthan

Advocate for Def. : Basti Chand, Adv.

Advocate for Pet/Ap. : Manish Shishodia, Adv.

Disposition : Appeal rejected

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioner.

The counsel for the respondent produced before the Court the original muster role book and filed a certified photostat copy of the muster role of the relevant date.

The certified copy of the muster role be placed on record.

2. This appeal is directed against the judgment dated July 18, 1983 passed by the Workmen's Compensation Commissioner, Bhilwara, in compensation case No. 39/92, whereby the claim filed by the appellants-claimants was rejected on the ground that it was not proved that the deceased had been employed by the respondent and was a workman within the meaning of Clause (n) of Section 2 of the Workmen's Compensation Act, 1923. The learned counsel for the appellant has submitted that the deceased Ladu Son of the appellants was working at the site of Kothari Project, Jalia Minor where work was in progress. He had been employed on daily wages of Rs.7/- per day and on April 25, 1981, the date on which incident occurred, Ladu was working in the capacity of a workman and his death occurred because he entered into the well, in order to give assistance to one Rawta who had entered into the well and became unconscious on account of intoxicating gases. It is further submitted by the learned counsel for the appellant that the finding given by the Commissioner, Workmen's Compensation, that the deceased Ladu was not a workman is not correct. On the other hand, the learned counsel for the respondent has supported the impugned judgment given by the Workmen's Compensation Commissioner.

3. I have carefully considered the arguments advanced by the counsel for both the parties and also perused the original record of the case. I have also considered the entries of the muster- role which has been produced in original and a certified copy of which has already been placed on record. Muster-role for the period from April 1, 1981 to April 30, 1981 clearly shows that the name of Ladu deceased is not entered in the muster-role. The name of Roop Singh S/o Salam Singh who is one of the witnesses for the claimants-appellants is entered in the muster-role. The muster-role or copy thereof was not filed before the Workmen's Compensation Commissioner.

4. In view of the fact that the muster-role does not contain the name of deceased Ladu, the learned counsel for the appellant has placed reliance on the circumstantial evidence that on the date of the incident, the deceased Ladu was working at the site and he actually entered into the well under the directions of the

Mistri who was working there. Reliance has also been placed on oral evidence of Mangoo, Roop Singh and Nanda for the purpose of proving that the deceased Ladu was a workman.

5. I have carefully gone through the statements of Mangoo, Roop Singh and Nanda. Mangoo, the appellant No. 1 is the father of the deceased. He was obviously not present at the site and he does not have any personal knowledge as to the circumstances in which the deceased Ladu went to the site. Mangoo has nowhere stated that he was employed by the respondent or any officer authorised by the respondent in his presence. Therefore, the testimony of Mangoo does not help the learned counsel for the appellant in proving that the deceased Ladu had been employed by any officers of the respondent.

6. Roop Singh has given evidence to the effect that he had seen the deceased Ladu working at the site for the last 5 to 7 days prior to the date of incident. It is further stated by him that the deceased was working on the 'garhat' (a device for grinding stones with lime etc.), kept at the site by 'thekedar'. Keeping in view the entries of the muster-role, it is difficult to hold that the evidence of Roop Singh and Nanda is sufficient to prove that the deceased had been employed by or on behalf of the respondent. Nanda has given evidence to the effect that deceased Ladu has been working as a labour at the site and he was a Government worker but he has nowhere stated that the deceased was employed by any officer employed on behalf of the respondent. Therefore, the testimony of Roop Singh and Nanda both does not help the appellants in establishing that the deceased Ladu had been employed on behalf of the respondent on the date of the incident.

7. The respondent examined Bhairo Singh before the learned Workmen's Compensation Commissioner. Bhairo Singh has given evidence that on April 25, 1981 he was working at the site of Jalia Minor in the capacity of a mate and had about 10 to 12 persons under him but Ladu was not one of them. It is further stated by Bhairo Singh that one Hakim was working as a helper and he was operating the engine installed inside the well. According to this witness Hakim entered into the well in order to stop the engine. But by slip of his foot, he fell into the well. One Rawta also entered the well but lost his senses after entering into

the well. At that time, the deceased Ladu entered the well in order to help 1 Hakim and Rawta who had entered the well and lost his senses. It is further stated by Bhairo Singh that nobody had instructed Ladu to enter into the well. Hakim and Rawta were taken out of the well with the help of ropes but Ladu could not be taken out of the well till he was dead. After his death his body was taken out of the well. It is categorically stated by Bhairo Singh that deceased Ladu was not employed on behalf of the respondent and his name was not entered in the muster-role.

8. The evidence of Bhairo Singh shows that in addition to the persons employed on behalf of the respondent some persons had been employed by thekedar who was working at the site. Bhairo Singh has added that he does not recognise the persons employed by the Thekedar. The learned counsel for the respondent has submitted that in view of the entries of muster-role for the month of April' 1981 and the statement of Bhairo Singh proved that the deceased Ladu was not employed on behalf of the respondent, stands proved and therefore the deceased Ladu could not be regarded as a workman within the meaning of Clause (n) of Section 2 of the Workmen's Compensation Act, 1923.

9. After carefully considering the arguments advanced by the counsel for both the parties, I am of the opinion that the appellants-claimants could not prove that the deceased Ladu had been employed on behalf of the respondents directly.

10. The learned counsel for the appellant has also placed reliance on Section 12 of the Workmen's Compensation Act, 1923 and contended that even if it is held that the deceased Ladu was not employed by the respondent, in the circumstances it should be held that he was employed by Thekedar who was working at the site and, therefore, by virtue of provisions contained in Section 12 of the Act the respondent would be liable to pay the compensation of the appellants-claimants.

11. Section 12 of the Workmen's Compensation Act reads -

'12. Contracting (1) Where any person (hereinafter in this section referred as the principal) in the course of or for the purposes of his trade or business contracts

with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor for any other reason from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.'

12. Section 12 of the Workmen's Compensation Act, 1923 applies to those cases where the principal engages a contractor and the contractor employs persons to do the work of the principal. The link between the principal and workman in such cases is the contractor. In order the appellants may get the benefit of Section 12 of the Workmen's Compensation Act, 1923, it was necessary for the appellants to show that the contractor who had employed the deceased Ladu was a person to whom contract had been given by the respondent in terms of Section 12 of the Workmen's Compensation Act, 1923. The learned counsel for the appellant has

submitted that respondent's witness Bhairo Singh has disclosed the name of the contractor as Banshi Lal but the name of the Contractor has not been disclosed in the claim petition nor the contractor who had employed the deceased Ladu has been impleaded as a non-petitioner in the claim petition. It is also not known how many contractors were engaged at the site for the purpose of carrying out the work of the respondent. The learned counsel for the respondent has contended that in the absence of the contractor who had employed the deceased Ladu the petition was not maintainable because of the defect of non-joinder of a necessary party. It is also contended by him that in order to show that the deceased Ladu had been employed by a contractor to whom work had been assigned by the respondent, it was necessary for the appellants-claimants not only to disclose the name of the contractor but to further show that he had employed the deceased Ladu and since this had not been done the appellants cannot get the benefit of Section 12 of the Workmen's Compensation Act, 1923.

13. I have carefully considered the arguments advanced by the counsels for the parties. I do not want to express any opinion whether in a proceeding for compensation initiated against the principal, the contractor is a necessary party. This appeal can be disposed of on the ground that it has not been proved that the contractor who had given employment to deceased Ladu was the contractor engaged by the respondent for the purpose of carrying out the work at the site. Even if the contractor who had given employment to the deceased Ladu, was not a necessary party (sic), the disclosure of his name and the terms of the employment was necessary, for the purpose of proving that the deceased Ladu had been employed by a person who had been engaged by the respondent. In the instant case, the contractor has been produced in the witness box. Though it is a hard case since the deceased Ladu lost his life while making attempt to save the lives of two persons, the Workmen's Compensation Commissioner could not have awarded compensation to the appellants unless it was proved that the deceased Ladu had been employed by the respondent or by a contractor engaged by the respondent.

14. For the reasons mentioned above, I come to the conclusion that the appellants have not been able to prove that the deceased Ladu had been given employment

by the respondent or by a contractor duly engaged/appointed by the respondent. On this ground, the appeal must fail. Consequently the appeal is rejected.

15. While parting with this judgment, I cannot help observing that the deceased Ladu, died while he was making an attempt to save the lives of Hakim and Rawta who had entered the well and had lost their senses on account of intoxicating gases. That was a noble act on the part of the deceased and in the facts and circumstances of the case it is recommended that the respondent should consider the question of making ex-gratia payment to the appellants whose sole bread winner has lost his life. It is expected that the respondent will consider this question within a period of three months from the date of receipt of this order. The learned counsel for the respondent has submitted that he would request the respondent to take an appropriate action on his behalf without any delay.

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