

Ajit Singh Vs. Rita Devi and ors

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Court : Delhi

Decided On : Nov-26-2012

Judge : Veena Birbal

Appellant : Ajit Singh

Respondent : Rita Devi and ors

Advocate for Pet/Ap. : Ms. Arati Mahajan Shedha, Mr. Anand Kumar, Mr. Vinod Kumar Jha

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

26. 11.2012 + FAO 363/2011 AJIT SINGH Through : Appellant Ms. Arati Mahajan Shedha and Mr. Anand Kumar, Adv. Through : Respondents Mr. Vinod Kumar Jha, Adv. for R1 to 4. versus RITA DEVI & ORS CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.(ORAL) * FAO No. 363/2011 1. This is an appeal under Section 30 of the Workmens Compensation Act, 1923 (hereinafter referred to as the Act) wherein challenge has been made to the impugned order dated 08.03.2011 passed by the Commissioner, Workmens Compensation, Ashok Vihar, Delhi thereby granting compensation of ` 2,03,850/- along with ` 2,500/towards funeral charges to the respondents.

2. Briefly, the background of the case is as under: Respondents no. 1 to 4 i.e. wife and children of deceased Om Prakash had filed a claim petition seeking

compensation on account of death of Om Prakash. Respondent no. 1 is the wife of deceased and respondents no. 2 to 4 are his minor children. The case of the respondents no. 1 to 4 was that deceased was employed with the appellant/management for the past 5 years prior to his death as a karigar and was drawing a salary of ` 3,000/- per month. It was alleged that his age was 32 years at the time of his death. It was alleged that on 01.06.2000, he was working in the establishment of the respondent where the work of manufacturing of plastic goods was being done. On the aforesaid date, while working his body all of a sudden touched the loose electric wires of the fan as a result of which the deceased suffered electric shock and fell down and became unconscious. He was removed to hospital where he was declared having brought dead. His MLC was prepared. Post-mortem was also conducted. As per post-mortem report, the cause of death was electrocution. FIR was also registered against the appellant. By way of said application, the respondents i.e. wife and children of deceased had claimed a compensation of ` 10 lakhs from the appellant along with interest.

3. The appellant/management filed reply before the Commissioner wherein it was stated that the deceased was working as a Contractor and was being paid for the job work and was not working in the capacity of a workman. It was further alleged that he had died due to his own negligence and the appellant should not be held liable for the same as his case was not covered under the Act. The appellant had denied that the deceased Om Prakash was working for the past 5 years on a salary of ` 3,000/- per month as was alleged. According to him, the deceased was working as a Contractor i.e. thekedar who had to melt the plastic bags in the pot of fire and was paid as per the job work. The respondent had filed rejoinder denying the allegations made therein and had reiterated the stands taken in the claim application.

4. On the pleadings of the parties, the following issues were framed: i) Whether there exists relationship of employee and employer or the deceased was working as contractor with respondent? ii) Whether accident occurred negligence of the deceased? due to iii) If not, whether the petitioners are entitled to compensation as per the claim application, if so. iv) 5. Relief if any. To prove her case, the wife of the deceased i.e. respondent no. 1 had filed her affidavit and had also placed on

record copy of post-mortem report Ex.PW1/3, FIR Ex.PW1/4, charge sheet Ex.PW1/5, etc. respondent no. 1 has not been cross-examined The by the appellant/management despite opportunities given. No evidence was also led by the appellant/management before the Commissioner.

6. After hearing the counsel for parties, the Commissioner has held that the deceased was a workman within the meaning of the Act and the accident had arisen out of and during the course of employment and held that the issue of negligence was not relevant in the matter and accordingly granted the compensation of ` 2,03,850/- taking the minimum wages @ ` 2,843/- per month.

7. Aggrieved with the aforesaid order, the present appeal is filed.

8. Learned counsel for appellant has contended that the deceased was working as a contractor and was being paid for the job work and was not a workman within the definition of Section 2(1)(n) of the Act and as such no compensation could have been awarded to him.

9. On the other hand, the stand of the respondents is that impugned order is legal and valid and no case for interference is made out. It is submitted that evidence of record establishes that deceased was a workman as per definition of workman given under Section 2(1)(n) of the Act.

10. The question to be decided is whether the deceased was a workman as defined under Section 2(1)(n) of the Act.

11. There is no evidence led by the appellant before the Commissioner to substantiate its stand. It is not disputed that while doing the work in the premises of the appellant, he was electrocuted. It is also admitted by appellant that the deceased was working for his trade.

12. Section 2(1)(n) of the Act defines a workman as under:- ""workman" means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business...."

13. The relevant finding of the Tribunal is as under: From the pleadings of the parties, it is not denied that the deceased was not working. The management has taken the stand that he was not a workman and he was working on the piece meal basis. No evidence has been adduced by them. The contents of the criminal documents also indicates that the deceased was working as a workman. Even otherwise the defence of the respondent becomes nugatory in view of the law settled by the Honble High Court of Kerala in the case Kunjoonamma Danial Vs. K.S.E.B.

14. Before the Commissioner, the respondent no.1 i.e., the wife of deceased had filed an affidavit Ex. PW1/A by way of evidence wherein she had stated that her husband was 32 years of age and was working with appellant for the past five years as a `Karigar and was getting a salary of Rs.3000/- per month at the time of his death and he died while doing work there. She has also stated in the affidavit Ex. PW1/A that appellant was dealing with the manufacturing of plastic goods. There were loose electrical wire in the factory premises and while working, the body of deceased had touched the loose electric wires and was electrocuted. He became unconscious and was removed to the hospital where he was declared brought dead. She had placed on record copy of FIR Ex.PW1/4 which was registered on the complaint of one co-worker Rajinder. She has also placed on record the other relevant documents i.e., postmortem report Ex.PW1/3, charge sheet Ex.PW1/5, MLC Ex.PW1/2 etc. In police documents, it is stated that the deceased was employee of appellant. She has not been cross-examined. No evidence was led by the appellant to substantiate his stand. Further, the respondent has not been cross-examined by the appellant.

15. Assuming that the stand of appellant is correct that deceased was given work on contract basis for melting plastic as is contended even then it is admitted position that deceased had died while working at the place of work under his supervision which was belonging to appellant and deceased was doing work which was the trade of appellant.

16. In Kanjoonamma Danial and other Vs. Kerala State Electricity Board; 2003 ACJ 1436.the question was whether a petty contractor employed by Electricity

Board for maintenance of electric lines and working under the supervision of Electricity Board officials is a workman within the meaning of section 2(1)(n) of the Act so as to get compensation for the fatal injury. The Division Bench of the Kerala High Court in the said case held as under:⁵ Here the only question is whether the deceased was a 'workman' as defined under Section 2(n) of the Act so as to get compensation to the fatal injuries. It is not disputed that while doing the work for the Electricity Board as per the petty contract given to him and while carrying out the work by himself under the supervision of the Electricity Board officials he met with the accident. Therefore, he was a workman as defined under the Act and was entitled to compensation.

17. While deciding the said case, the judgments of the Apex Court in Dharangadhara Chemical Works Ltd. v. State of Saurashtra : AIR 195.SC 26. and Hussainbai v. The Alath Factory Tozhilali Union and Ors., AIR 197.SC 141. have been taken into consideration. The judgment of the Madhya Pradesh High Court in Champalal V Daryavbhai :

1992. ACJ 16. has also been considered. The relevant portion of the same is reproduced as under: when a person contracts to do the work and as per contract he himself does the work, while doing such work, he is a 'workman' as defined under the Act. In view of the above discussion, the Commissioner has rightly granted compensation in favour of respondent.

18. The other contention raised is that deceased had died of his own negligence. This contention has also no force. As noted above, no evidence has been led by the appellant before the Commissioner to substantiate the same. The Tribunal has rightly rejected the said contention by holding that no evidence is led to prove the same. In view of the above discussion, no illegality is seen in the impugned order which calls for interference of this court. Appeal is dismissed. CM No. 15766/2011 (stay) In view of the order on the main appeal, no orders are required on this application. Application stands disposed of. VEENA BIRBAL, J NOVEMBER 26 2012 kks/ssb