

IN THE HIGH COURT OF DELHI

FAO No. 52/2004

Smt. Shrem Wati & Anr. Appellants
! through: Mr. C.S.Parashar, Advocate
Mr. Mukesh Kumar, Advocate

VERSUS

\$ M/s. S.K.Plastics & Anr. Respondents
^ through: Mr. M.K.Awtaney, Advocate for R-1.

RESERVED ON: 4.1.2008

% DATE OF DECISION: 7.1.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

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1. Appellants are aggrieved by the order dated 23.9.2003 passed by the Commissioner for Workmen Compensation, Delhi.

2. Vide impugned order dated 23.9.2003 learned Commissioner for Workmen Compensation has dismissed the claim petition filed by the appellants under Workmen

Compensation Act 1923 seeking compensation on account of death of Sh. Birpal Singh (hereinafter referred to as the deceased).

3. In the claim petition filed by the appellants it was inter alia averred that:-

A Appellant No.1 Smt. Shrem Wati is the mother of the deceased and appellant No.2 Master Gajender Kumar is the younger brother of the deceased.

B Deceased died on 9.5.1995 due to an accident which occurred during the course of his employment with the factory M/s. S.K.Plastics (respondent No.1) (hereinafter referred to as the factory) and that the accident resulting in the death of the deceased was caused due to the negligence of the owner of the factory Mr. Sudhir Kumar (respondent No.2).

C Deceased was working as a Mistri in the factory M/s. S.K.Plastics a sole proprietorship concern of Mr. Sudhir Kumar at a salary of Rs.2,000/- per month.

D The factory was engaged in the business of manufacture of plastic granules.

E The normal working hours of the deceased were 12 hours i.e. from 8:00 AM to 8:00 PM.

F Respondent No.2 directed the deceased to work at least twice in a week after his working hours. Respondent No.2

used to pay to the deceased Rs.500/- per month as over time charges.

G The working conditions in the factory were dangerous to human life as there were live electricity wires present in the factory premises.

H On various occasions deceased informed respondent No.2 about the presence of live electricity wires in the factory premises and asked him to rectify the said defect.

I Respondent No.2 did not pay any heed to the request of the deceased.

J On 9.5.1995 respondent No.2 directed the deceased to work over time and asked him to report at the factory premises after 8:00 PM.

K On said date deceased died due to electrocution while working on a machine installed in the factory premises.

L Deceased was aged 19 years at the time of his death.

4. Defence set up by the respondents to the claim petition filed by the appellants was that:-

A Deceased was employed as a chowkidar in the factory and was not employed as a Mistri as alleged by the appellants.

B Deceased neither died due to an accident which

occurred during the course of his employment with the respondent No.1 nor the death of the deceased was a result of the negligence of respondent No.2.

C Deceased died a natural death.

D Deceased did not die due to the electrocution while working on a machine installed in the factory.

E There was no electricity connection in the factory since 1993.

F No manufacturing work was being conducted in the factory since the year 1994.

5. As an incidental defence respondents pleaded that the deceased never complained to the respondent No.2 about the presence of live electricity wires in the factory premises.

6. On behalf of the appellants, appellant No.1 Smt. Shrem Wati (mother of the deceased), one Mr. Ajit Kumar (maternal uncle of the deceased) and one Mr. Anil Kumar who was an assistant Ahlmad in a Criminal Court in Delhi were examined as PW-1, PW-2 and PW-3 respectively.

7. PW-1 and PW-2 deposed on the lines of the claim petition. They also deposed that they visited the factory premises on various occasions. That during the time of the visit they found that manufacturing work was being conducted in the factory and also saw live electricity wires in the factory.

8. Anil Kumar PW-3 brought the record pertaining to a criminal case registered against the respondent No.2 under Section 304 A IPC in connection with the death of the deceased. He proved site plan Ex. PW-4/B prepared at the time of the death of the deceased and postmortem report of the deceased PW-1/A.

9. Site plan Ex. PW-4/B shows that the death of the deceased had taken place in the factory premises. Postmortem report of the deceased Ex. PW-1/A shows that deceased died due to electrocution.

10. On behalf of the respondents, respondent no.2 Mr. Sudhir Airi and one Mr.Yograj Tyagi were examined as DW-1 and DW-2 respectively.

11. DW-1 reiterated the defence taken by the respondents in the written statement. He deposed that the appellants have wrongly alleged that the manufacturing work was being conducted in the factory premises. That he was having a godown in the said factory. That he found the dead body of the deceased outside the factory premises. That the working hours of the deceased were from 9 AM to 5.30 PM.

12. It is further relevant to note the following portions of the cross-examination of DW-1:-

“I do not have any record regarding the payment of

wages to the deceased. I maintained records related to payment of wages but at present I do not have any record.

XXX XXX XXX

It is incorrect to suggest that when the deceased died he was under my employment. It is correct that when deceased died he was under my employment. I did not give my intimation to any authority about the death of the deceased including the CWZ. It is incorrect to suggest that death of the deceased took place in my premises, but it is correct that he died due to electric current."

13. Mr.Yograj Tyagi DW-2 was the owner of the factory premises. He deposed that he had let out the factory premises to respondent no.2. That electricity connection of the factory premises was disconnected in the year 1993 and that same was not restored.

14. In his cross-examination DW-2 deposed as under:-

"It is correct Sh.Birpal Singh died due to electrocution in the factory of M/s.S.K.Plastic."

15. The Commissioner Workmen's Compensation dismissed the claim petition filed by the appellant for the following three reasons:-

A The testimonies of PW-1 and PW-2 suffer from contradictions.

B The stand of the appellant was that the working hours of the deceased were from 8 AM to 8 PM. No suggestion was given by the appellant to DW-1 that he was deposing

falsely that working hours of the deceased were from 9 AM to 5.30 PM. That thus version of the respondents stands established that the working hours of the deceased were from 9 AM to 5.30 PM and not from 8 AM to 8 PM as alleged by the appellants.

C The testimony of one Mr. Mahinder Singh ASI in the criminal court during the trial of the case registered against the respondent no.2 under Section 304-A IPC was noted. He had deposed that he conducted investigation pertaining to said case. That when he visited the factory premises on 9.05.95 i.e. a day after the death of the deceased he found that there was no electricity in the factory premises. That this establishes the version of the respondents that the electricity connection of the factory premises was disconnected in the year 1993.

16. The only question that needs consideration in the present case is whether the decision of the trial court of dismissing the claim petition of the appellants was correct.

17. A cumulative consideration of pleadings of the parties and evidence on record reveals following facts:-

A Deceased died in the factory premises as evidenced by the site plan Ex.PW4/B.

B Deceased died due to electrocution as evidenced by postmortem report of the deceased Ex.PW1/A.

C At the time of his death deceased was working under the employment of respondent no.2. This fact stands admitted by the respondent no.2 in his testimony as DW-1.

D Respondents did not produce any record to show that the deceased was employed as a Chowkidar and not as a mistri. It was also pleaded that deceased was not paid salary @ Rs.2,000/- per month as alleged by the appellants but was paid the wages of that of an unskilled workman. Though it was deposed by the respondent no.1 in his testimony as SW-1 that he maintains records relating to payment of wages to its employees yet he did not produce any record pertaining to the wages of the deceased. Non-production of record pertaining to the wages of the deceased leads to an adverse inference to be drawn against the respondents.

E Respondent no.2 in his testimony has pleaded that he was having a godown in the factory premises and was not running a factory as alleged by the appellants. He further deposed that besides deceased 2-3 ladies were working in the said godown. The examination of the said ladies would have lend credence to the version of the respondent no.2 that he was having a godown in the factory premises and no manufacturing activities were being carried out from the said premises. So-called employees were not examined by the

respondents. Non-examination of said so-called employees leads to an adverse inference to be drawn against the respondents.

F Defence set up by the respondents as that the deceased died a natural death. However in his cross-examination respondent no.2 admitted that the deceased died due to electric shock.

G DW-2 (a witness on behalf of the respondents) by deposing that deceased died due to electrocution in the factory of respondent no.2 belies the version of the respondents that the deceased died a natural death and death of the deceased did not occur in the factory of respondent no. 2.

H As afore-noted respondents has incidentally pleaded that the deceased never complained to the respondent no.2 about the presence of live electricity wires in the factory premises. This shows that the respondents were conscious that it can be proved that the death of the deceased occurred due to the electrocution while working on a machine installed in the factory premises therefore they pleaded that the deceased never complained about the presence of live electricity wires.

18. The facts noted in para 17 above are pointers indicating that the death of the deceased occurred due to the

electrocution while working on a machine installed in the factory premises.

19. Trial court has merely held that the testimonies of PW-1 and PW-2 suffer from contradictions. The so-called contradictions in the testimonies of PW-1 and PW-2 have not been noted and explained by the trial court.

20. Ex-facie, there appears to be no contradictions in the testimonies of PW-1 and PW-2.

21 The fact that no suggestion was given by the appellants to the respondent no.1 that he is deposing falsely that the working hours of the deceased were from 9 AM to 5.30 PM is of no relevance in the light of facts noted in para 17 above which indicates that the death of the deceased occurred due to the electrocution while working on a machine installed in the factory premises.

22. Not much importance can be attached to the testimony of ASI Mahinder Singh that there was no electricity in the factory premises on 10.05.95 i.e. a day after the death of the deceased. Theft of electricity is rampant in Delhi. It is also possible that the respondent no.2 after being aware that the police officials are coming for inspection disconnected the electricity. Admittedly, the deceased died due to electrocution and place of death is the factory. I need not speculate.

23. In view of the above discussion and particularly facts noted in para 17 above I hold that the death of the deceased occurred due to electrocution while working in the factory premises i.e. during the course of employment in respondent no.1 and thus respondent no.2 being owner/sole proprietor of respondent no.1 is liable to pay compensation to the appellants. Impugned order is set aside.

24. Since compensation payable has to be computed I remand the matter to the Commissioner Workmen's Compensation who shall determine the compensation in accordance with the law.

25. No costs.

January 7 , 2008
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PRADEEP NANDRAJOG
JUDGE