

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21st March, 2012

+ FAO 81/2010

GOVIND GOENKA

.....Appellant

Through: Mr. A.S. Kushwaha,
Mr. Abhigya Kushwaha and
Ms. Vandana Sharma, Advs.

Vs.

DAYAWATI AND OTHER

.....Respondent

Through: Mr. R.K. Nain, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

1. By this appeal filed under Section 30 (1)(c) of The Workmen's Compensation Act, 1923, the appellant seeks to set aside the order dated 04.11.2009 whereby the Commissioner, Workmen's Compensation Act has awarded a sum of Rs. 2,63,630/- in favour of the claimant Smt. Dayawati/respondent herein towards death compensation of the deceased Bhikam Singh @ Jagdish besides awarding a sum of Rs 2,500/- towards funeral charges in terms of Section 4(4) of The Workmen's Compensation Act, 1923.

2. Brief facts of the case relevant for deciding the present appeal are that on 04.05.2004, the present appellant engaged one contractor named Saleem to do some repairs and alterations in his shop bearing No.A-94, Kamla Nagar, Delhi and for doing the said job the said contractor brought some labourers alongwith him and the deceased Bhikam Singh @ Jagdish was one of the labourers employed by him to carry out the said job. That on 08.05.2004, the deceased Bhikam Singh @ Jagdish was on his duty as a labourer at the said premises owned by the appellant when he alongwith other labourers was removing a partition wall, portion of the said wall fell on the deceased Bhikam Singh @ Jagdish as a result of which he sustained grievous injuries all over his body. The deceased was immediately taken to Sanjeevan Hospital, Roop Nagar, Delhi but his life could not be saved and he ultimately succumbed to the said injuries. Post Mortem of the body was conducted at Asaf Ali Government Hospital Mortuary, Delhi. FIR No.140/2004 dated 8.5.2004 was registered at the police station Roop Nagar u/s 288/304-A/34 IPC. After the death of Bhikham Singh @ Jagdish

the dependent members of the deceased had approached the Commissioner under section 4 of The Workmen's Compensation Act to claim compensation of Rs.3,34,690/- from the appellant. After having served the legal notice dated 27.12.2004 upon the appellant herein, the said claim petition filed by the respondent was contested by the appellant and the main ground taken by the appellant before the Commissioner was that the deceased Bhikam Singh @ Jagdish was not their employee as his services were engaged by the contractor Saleem and, therefore, the appellant had no liability to make any payment towards the compensation amount. The other plea taken by the appellant was that the workman was a casual worker and was not employed for the trade and business of the appellant and, therefore, also the appellant had no liability to pay any compensation amount in favour of the dependent members of the deceased. Based on the pleadings of the parties, the learned Commissioner had framed issues and both the parties led their evidence in support of their respective contentions and vide orders dated 04.11.2009 the learned Commissioner awarded a

sum of Rs 2,63,630/- towards compensation amount on account of the said death of Jagdish. The learned Commissioner had also awarded a sum of Rs 2,500/- towards funeral expenses in terms of Section 4(4) of the said Act. Being aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the said order, learned counsel representing the appellant submitted that the said labourer Jagdish was never employed by the appellant and, therefore, he does not fall in the definition of “Workman” as defined under Section 2(1) (n) of The Workmen’s Compensation Act, 1923. The appellant also disputed the identity of Jagdish and averred that the said labourer gave his name as Jagdish when rushed to the hospital and not Bhikham Singh, which was the name of the deceased as per the respondents. In support of his arguments, counsel for the appellant placed reliance on the following judgments:-

(i) Mangala Ben –vs- Dalip Motwani, 1998 LLR 656;

(ii) Lakshminarayan Shetty –vs- Shantha & Anr., 2001(4) SCALE, 449

(iii) Central Mine Planning and Design Institute Ltd. –vs- Ramu Pasi and Anr., VIII (2005) SLT 950;

(iv)Om Prakash Batish -vs- Ranjit @ Ranbir Kaur & Ors, JT 2008(5) SC 443;

(v)Ajay Singh Lal -vs- Smt. Somwati & Anr., 116(2005) DLT, 421

(vi)Bhasin Petrol Pump Service -vs- Mst.Mughla Khatoon & Anr., 2010(1) SLR 793.

4. Opposing the present appeal, learned counsel for the respondent submitted that the death of the deceased Jagdish @ Bhikam Singh had occurred in the course of his employment with the appellant and therefore the appellant cannot escape from its liability to pay the amount of compensation as awarded by the learned Commissioner under The Workmen's Compensation Act. Counsel also submitted that the learned Commissioner has given a reasoned award and no illegality has been pointed out by the appellant to assail the said decision to grant compensation to the respondent. In support of his arguments, counsel for respondent placed reliance on the following judgments:-

(i) Balla Mallamma -vs- Registrar, Osmania University, Hyderabad and Anr, 2001(2) T.A.C.182 (AP),

(ii) Zila Sahkari Kendrya Bank Maryadit -vs- Shahjadi Begum & Ors., IV (2006) ACC 1 (SC)

(iii)Maghar Singh –vs- Jashwant Singh, 1997 ACJ 517 (SC).

5. I have heard counsel for the parties and given my thoughtful consideration to the arguments advanced by them.

6. Indisputably, the deceased workman had succumbed to his injuries and died on 8.5.2004 while he alongwith other labourers was removing the partition of the wall in the shop bearing No. A-19, Kamla Nagar, Delhi which belongs to the appellant. There is no dispute between the parties with regard to the fact of accident and death of the deceased in the premises of the appellant. The identity of the deceased also cannot be of any dispute as the said worker Bhikam Singh @ Jagdish had died in the said accident as the non mentioning of the name Bhikam Singh @ Jagdish with some of the authorities is of no consequence and hence the plea taken by the appellant disputing the identity of the deceased is totally unfounded and misconceived. The other objection taken by the appellant is that the deceased does not fall within the definition of "workman" as defined under Section 2(1) (n) of The Workmen's Compensation

Act, 1923. Before dealing with the said objection, it would be appropriate to reproduce the relevant provisions of the Workman Compensation Act as under:-

2(e) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

2 (n) “workman” means any person who is

(i) a railway servant as defined in {clause (34) of section 2 of the Railways Act, 1989 (24 of 1989)} not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft.

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;}

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of {the Armed Forces of the Union} and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

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 workmen, 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 workmen,

12. CONTRACTING. - (1) Where any person (hereinafter in this section referred to 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, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this

section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered 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.

7. As would be seen from the definition of “employer” envisaged under Section 2(e) of the Act, the same is of wide amplitude and would certainly encompass the present appellant who at the relevant time had employed the services of the contractor to carry out the job of repairs and alterations in his shop. The contractor who had taken the services of the deceased workman as a labourer no doubt will also be covered within the definition of employer but qua the appellant he would remain his agent and the appellant would be the principal employer. There is thus no difficulty to arrive at a conclusion that the appellant for all intents and purposes was the principal

employer who had engaged the services of an Agent contractor to carry out the said job of the repair work.

8. It would also be relevant to reproduce Section 2(n) of the Act as it stood before the amendment by Act 46 of 2000 and the same is as under:--

(n) "workman" means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or business who is-

...

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

9. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the "workman" as it stood prior to the amendment and after the amendment. Prior to the amendment, certainly the workman whose employment was of a casual

nature and who was employed otherwise than for the purpose of trade or business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual workmen who met with an accident during the course of the employment unconnected with the employer's trade or business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business would also be covered within the definition of workman. The impact of the difference of the definition of the workman as it stood prior to the amendment and after the amendment has been referred to in the case of in ***Om Prakash Batish*** (*supra*) and relevant paragraphs of the same are reproduced as under:-

21. The definition of "workman" as provided in Section 2(n) of the Act, as it stood on the date of the incident, reads as under:-

"(n)

"workman" means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or business who is—
....

(ii) employed in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

The ingredients of the said provisions are:-

(i) The workman must not be employed as a casual workman;

(ii) His employment must be in connection with the employer's trade and business.

22 .We must, however, place on record that the words beginning from "other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business" have been omitted by Act 46 of 2000. We are, however, considering the statutory provision as it then stood.

23. The workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provision of the Act.

24. Schedule II appended to the said Act to which reference was made by Mr.Dhingra, in our opinion, is not applicable, as it is subject to the provisions of Section 2(1) (n) of the Act. If, therefore, the law as it then stood would exclude the applicability of the Act, having regard to the definition of the term "workman" the same cannot be held to include deceased only because he was working in connection with a building activity.

Even otherwise, working in a residential house does not satisfy the requirement of law.

25. We must also bear in mind that the very fact that the Act was amended is itself a pointer to show that the Parliament intended to avoid a mischief which was prevailing.

Applying the principles of mischief rule [Heydon's case (1584) 3 Co.Rep.7a}, it must be held that prior to the amendment of the definition of "workman" the category of workman to which Ram Lal

belonged did not come within the purview of the provisions of the said Act."

10. So far as the interpretation of section 12 of the Act is concerned, again reference has been made to the principal making a contract for the purposes of trade or business, the judgment of the Division Bench of Andhra Pradesh High Court in the case of *Balla Mallamma –vs- Registrar, Osmania University, Hyderabad and Anr, 2001(2)T.A.C.182(AP)* is a complete answer and the relevant paragraph of the same is reproduced as under:-

"15. This judgment reiterates a principle of interpretation and the principle is that the meaning of the word must be gleaned from the context in which it is used. Meaning assigned to a work in a particular Act may mean one thing and the meaning of the same term may give a different meaning when used in a different Act. Therefore, the word 'trade' or 'business' as used in this Act have to be understood in the context in which this Act has been enacted. Basically the Act has been enacted to provide compensation to the workers suffering during the course of employment. It is also the purpose of the Act that they should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the provision are kept in mind, then the word 'trade' or 'business' may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute. If the plea of the University is accepted that they are engaged in imparting education, conducting examinations and conferring degrees only and cannot be termed to be doing any business or trade and hence they are not liable to pay compensation, then any person engaged for similar activity by any Government Department, any University, any hospital, if faced with an accident, would not be able to get compensation in terms of Section 12 of the Act although such a person would be a workman under the Act. Similarly if an individual who wants to construct a residential house of his own

engages a person for construction of the house and if such a person faces an accident during the course of the building of the house, he would be remediless under the Act. Even otherwise the normal activity of the University is imparting education, conducting of examinations and conferring degrees, this they cannot do without having proper buildings. In a similar case where PWD had engaged contractors for the purpose of construction of bridges and roads and an accident occurred and a worker died, the contentions raised before the Jammu and Kashmir High Court in Public Works Department –vs- Commissioner, Workmen's Compensation, 1981 LAB IC 493, were also raised before this Court. Para 7 of the judgment is reproduced below:

"The only object behind the provisions of Section 12 appears to be to secure speedy payment of compensation resulting from injuries to a workman. The Legislature intended to make doubly sure payment of such compensation to the workman, or to his dependents in the event of his death, as it could not exclude the possibility of the contractor being in some cases a man of straw, whose straitened circumstances might jeopardize the chances of recovery of such compensation. If, therefore, a restricted meaning is given to the word "business" so as to imply an activity with the object of earning profit only, the object behind Section 12 is likely to be defeated. Not only to speak of the Government performing its various functions of a welfare State, even many other persons may have to be kept out of the purview of Section 12 by assigning such a limited meaning to the word "business" occurring in it. Such an interpretation would absolve from liability to pay compensation even a person who would appoint a contractor for building his residential house, as building one's residential house cannot be said to have the object of earning profit or gain behind it. It cannot, as such, be said to partake of "business" or "trade" in commercial sense. Merely because the word "business" is clubbed with the word "trade" in Section 12, it should not be inferred that it has been used in simple commercial sense. Both these words have to be read disjunctively and not conjunctively. Similarly, the doctrine of immunity attached to sovereign acts of State cannot be extended to acts like constructing roads or bridges, as such acts are not of such a nature as cannot be done by a private person. Viewed thus, the word "business" occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention, or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. It is one of the meanings

given to the word "business" in dictionary. Construction of roads being one of the principal concerns of the Public Works Department of the Government inviting its serious attention, it is "business" within the meaning of Section 12 and the appellant was thus the principal employer vis-à-vis the deceased labourers. With utmost respect to the learned Judge, if I may say so, I am unable to agree with the view taken by him in Y.Srivastava Rao's case (1972 ACJ 398) that "business" means and includes only that activity which is aimed at earning profit. Such an interpretation, as already observed, is bound to destroy the very raison d'être of Section 12. On the other hand, I am in respectful agreement with the view taken by the High Court of Punjab in M/s.Sardara Singh v. Sub Divisional Officer, Chanpur, AIR 1963, Punj. 217, and Gopal Singh and Sundar Singh -vs- Punjab State and others, AIR 1955 NUC (Punj.) 4976, that in such cases even Government can be made liable to pay compensation as principal employer under Section 12. To this extent, therefore, the impugned award is not open to question."

11. As would be seen from the above judgment of the Hon'ble Division Bench where the Osmania University, Hyderabad had engaged services of a contractor for white washing and painting the walls of the University and a worker employed by the contractor while white washing the walls had fallen and died and the objection raised was that whitewashing the walls of the University would not be an activity which could be construed as an activity for the purposes of trade and business of the University. Giving an extended meaning to the word "business" employed in the said section 12, the Hon'ble Division Bench took

a view that the restricted meaning given to the said expression would defeat the very *raison d'être* of section 12 of the Act.

12. The said interpretation given by the Division Bench also finds support from the amendment brought by the Parliament in the definition of Section 2(1)(n) of the Act omitting the words “Casual workman” and a workman who is employed other than for the purposes of employer’s trade or business. Reverting back to the facts of the present case, here also the deceased workman was employed by the contractor and although for carrying out repair job it might not be the principal activity of the appellant but yet the appellant cannot escape its liability keeping in view the object of the said beneficial piece of legislation.

13. For the expeditious grant of compensation in the event of such accidents taking place in favour of the victim’s dependent members, this act was enacted and a hyper technical interpretation of the statute would not only defeat the purpose of the said Act but would be adding insult to injury. Hence, in the

present case, this court does not find any merit in the present appeal.

14. In the light of the foregoing, the present appeal is hereby dismissed.

March 21, 2012

KAILASH GAMBHIR, J