

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 55/2012**

February 13, 2014

GOPICHAND DECD THR LRS & ANR Appellants

Through : Mr. R.K.Singla, Advocate.

versus

SUKHDEV & ANR Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO 55/2012 & CM 1886/2012(stay)

1. This First Appeal under Section 30 of the Employee's Compensation Act, 1923, impugns the judgment of the Commissioner dated 25.11.2011 which has allowed the claim petition filed by the respondents herein (applicants before the Commissioner). The appellants no. 1 to 3 and 5 to 8 are the legal heirs of the respondent no.1 before the Commissioner – Sh. Gopi Chand, and who were substituted in place of Gopi Chand during the pendency of the proceedings before the Commissioner. The appellant

no.4 Ashok Kumar, son of Gopi Chand, was already the respondent no.2 before the Commissioner.

2. The case set up by respondents before the Commissioner was that the deceased Sohan Lal was employed as a mason(Raj Mistri) by the appellants. It is stated that on 04.03.1996 while the deceased Sohan Lal was on duty, he met with an accident arising out of and in the course of employment and died due to electrocution as the accident site was not managed properly. An FIR No. 181/1996 was registered under Section 304A IPC with Police Station Janak Puri, New Delhi. The respondents had sent a notice for claim of compensation to which there was no response and hence the claim petition was filed.

3. The respondent no.1 before the Commissioner, namely, Gopi Chand, filed his written statement and stated that the deceased Sh. Sohan Lal was not his workman but was an employee of a Contractor Sh. Sohan Lal (Sohan Lal is the name of the deceased and Sohan Lal is also the name of the Contractor who was employed to carry out work on the site owned by Gopi Chand respondent no.1 before the Commissioner) and, therefore, the Contractor Sh. Sohan Lal is liable for the death of the Raj Mistri Sh. Sohan Lal.

It was contended that the construction work was being carried out by the Contractor Sh. Sohan Lal who managed the entire construction work and therefore it was the Contractor Sh. Sohan Lal who was responsible because there was no relationship of the employer and employee between the respondent no.1/before the Commissioner (appellants herein) and the deceased Sh. Sohan Lal.

4. The Commissioner has, while dealing with issue no.1, held that no documents were filed by the appellants herein that the deceased Sh. Sohan Lal was employed by them through the Contractor. It is also held by the Commissioner by referring to the FIR that the criminal case under Section 304A IPC was registered against Gopi Chand father of the present appellants. The criminal case had abated on account of death of Gopi Chand. The Commissioner has then referred to the various documents in the criminal case which showed that the deceased Sohan Lal was employed as Raj Mistri on the construction site of the appellants. The relevant observations made by the Commissioner read as under:-

“Issue No.(i)

The claimants have stated that deceased Sohan Lal died due to the employment injuries sustained by him on 4.3.1996 in the course and out of his employment with the respondents. The respondents have stated that deceased Sohan Lal was employed by them through Contractor Sohan

Lal. The respondents have not filed any document to substantiate their stands to show that deceased workman was employed by them through contractor. Shri Brij Mohan Garg, S/o.late Gopi Chand owner and resident of RZ-36A Indira Park Extension Part-I Bindapur Road, Uttam Nagar in his cross-examination has stated that he along with his brother is residing at RZ-36A Indira Park Extension Part-I, Binda Pur Road, Uttam Nagar, New Delhi. He has admitted that a criminal case under Section 304A of IPC was registered against his father Shri Gopi Chand and the same was abated on his death. The certified copies of charge-sheet filed in the FIR No.181/1996 under Section 304A of IPC registered with Police Station Janakpuri in the Court of Metropolitan Magistrate and other documents attached therewith clearly show that deceased Sohan Lal was employed as Raj Mistri on the construction site of the respondents and on 4.3.1996 during the course of his employment he got electrocuted which resulted in his death. Therefore, I hold that deceased Sohan Lal died due to the injuries sustained by him in the course and out of his employment with the respondents.

This issue is decided in favour of the claimants and against the respondent.”

5. In view of the above, the respondents before the Commissioner, and the appellants before this Court, failed to prove that the deceased Sh. Sohan Lal was appointed through a Contractor Sh. Sohan Lal. Accordingly, Commissioner held the respondents before him liable (the appellants before this Court) and directed them to pay compensation.

6. Counsel for the appellants argued before this Court two aspects. First aspect was that the deceased was an employee of the Contractor Sh. Sohan

Lal and, therefore, appellants cannot be held liable in view of the judgment delivered by learned Single Judge of this Court reported as *Ajay Singh Lal Vs.Smt. Somwati & Anr. 116 (2005) DLT 421*, and, the second aspect was that the deceased was not “*Workman*” within the meaning of the expression as found at the relevant time in 1996 because employment was only on casual basis.

7. Before I advert to the arguments on merits, it is relevant to note that appeal lies in this Court under Section 30 of the Act only where there is substantial question of law. Appeals are not entertained to re-appreciate and reappraise the findings of the facts which are arrived at by the Commissioner.

8. The first argument of the appellants which is buttressed by reference to the judgment in the case of *Ajay Singhal* (supra) is misconceived because there is finding of fact arrived at by the Commissioner that deceased employee was employed by the appellants, and not by the contractor Sh. Sohan Lal. This finding of fact does not raise substantial question of law because the Commissioner has rightly referred to the various documents filed in the criminal case which showed that the deceased Sh. Sohan Lal was employed by the respondents, and who therefore are the employers. The appellants filed no documents to discharge the onus of proof upon them that

there was a contractor Sh. Sohan Lal and that the deceased mason Sh. Sohan Lal was the employee of the contractor Sh. Sohan Lal.

9. So far as the second argument is concerned, I do not find any pleading in the written statement before the Commissioner that the deceased Sh. Sohan Lal was not covered under the definition of “Workman” inasmuch as the preliminary objection no.4 in the written statement which is relied upon by the appellants is only to the effect that the deceased Sh. Sohan Lal was not the workman of the respondents before the Commissioner but was the workman of an independent Contractor Sh. Sohan Lal. This aspect as already noted above, the respondents before the Commissioner, and the appellants herein, failed to prove.

10. In view of the above, there is no merit in the appeal and the same is, therefore, dismissed leaving parties to bear their own costs.

FEBRUARY 13 , 2014
‘sn’

VALMIKI J. MEHTA, J.