

GAHC010121832023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3294/2023

JALAL UDDIN
S/O- LATE ASOR ALI, R/O- VILL- MELEKADHING, P.O. BALIKATIA, P.S.
JURIA, DIST.- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ELECTRICITY
DEPTT., DISPUR, GHY-06, ASSAM

2:M/S. ASSAM POWER DISTRIBUTION CORPORATION LIMITED
REP. BY THE MANAGING DIRECTOR
PALTANBAZAR
GHY-08

3:HAMIDA KHATUN
W/O- ABDUL SAMAD
VILL AND P.O. BALIKATIA
P.S. JURIA
DIST.- NAGAON
ASSAM
PIN- 782122

4:HASNARA BEGUM
W/O- ABU KALAM
VILL AND P.O. BALIKATIA
P.S. JURIA
DIST.- NAGAON
ASSAM
PIN- 782122

5:COMMISSSIONER FOR EMPLOYEES COMPENSATION

NAGAON
ASSA

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14-06-2023

Heard Mr. R.P Sarmah, learned senior counsel assisted by Ms. A. Deka, learned counsel for the petitioner as well as Mr. B. Choudhury, learned standing counsel for the APDCL appearing for the respondent no.2 and Ms. M. Barman, learned Govt. Advocate appearing for the respondent no.1.

2. In view of the order that is proposed to be passed, issuance of notice on the respondent nos. 3, 4, and 5 is dispensed with.

3. The petitioner has challenged the judgment and award dated 13.03.2023 passed by the Commissioner, Employee's Compensation, Nagaon in *NEC Case No.1/2017- Hamida Khatun and Ors. v. Jalal Uddin.*

4. At the outset the Court had pointed out to the learned senior counsel for the petitioner that against the award passed by the Commissioner, Employee's Compensation, Nagaon, an appeal would lie to this Court under section 30 of the Employees Compensation Act, 1923. However, the learned senior counsel for the petitioner has submitted that the petitioner is assailing

the jurisdiction of the Commissioner, Employees Compensation to entertain the claim petition. In the said context, it was submitted that the respondent nos. 3 and 4 were not the dependent of their respective deceased sons.

5. It was also submitted that at an earlier point of time, the petitioner had assailed the *ex parte* award dated 09.09.2019, passed by the Commissioner, Employee's Compensation in NEC case no. 1/2017 by filing a writ petition under Article 226 of the Constitution of India, which was registered as WP(C) 428/2020, and this Court had entertained the writ petition, and allowed the petitioner to file an application under Order IX Rule 13 CPC read with Rule 41 of the Workmen's Compensation Rules, 1954 against the award dated 09.09.2019, passed in NEC case no.1/2017. Hence, it is submitted that when a co-ordinate Bench of this Court had entertained a writ petition to challenge the Employees' Compensation award, this Court cannot hold that the present writ petition would not be maintainable. By relying on the cases of (i) *AV Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani & Anr.*, AIR 1961 SC 1506, and (ii) *Ram and Shyam Company vs. State of Haryana and ors.*, AIR 1985 SC 1147, it was submitted that the existence of alternative remedy would not be a bar for entertaining a writ petition.

6. It is submitted that in the claim petition, the respondent nos. 3 and 4, who are the claimants before the Commissioner, Workmen's Compensation (now Employee's Compensation), had made a statement in para-1 of the claim petition filed before the Commissioner, Employees Compensation, Nagaon that their respective sons, namely, Sariful Islam and Hifjur Rahman were employees (labour) of respondent no. 1. It is submitted that when the father of the

deceased were alive, the mother of the deceased would not be entitled to claim compensation in a claim petition under Employees Compensation Act, 1923 and in this regard reference is made to the provision of section 2(1)(b) of the Employees Compensation Act. Accordingly, it is submitted that the claim for compensation attributed to electricity accident would not be maintainable under the Employee's Compensation Act.

7. Only the aforesaid two points have been raised by the learned senior counsel for the petitioner.

8. At the outset, it would be relevant to quote the provision of Section 2(1)(d) of the Employees Compensation Act.

2(1)(d) "dependant" means any of the following relatives of deceased employee, namely:-

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and*
- (ii) if wholly dependant on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;*
- (iii) if wholly or in part dependant on the earnings of the employee at the time of his death,-*
 - (a) a widower,*
 - (b) a parent other than a widowed mother,*
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,*
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,*
 - (e) a widowed daughter-in-law,*
 - (f) a minor child of a pre-deceased son,*
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or*
 - (h) a paternal grandparent if no parent of the employee is alive;*

Explanation.-For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.

9. On a plain reading of the herein before quoted provision of section 2(1)(d), it would be apparent from sub-clause (iii)(b) that "a parent" other than a widowed mother would be a dependent. In other words, "a parent" cannot be presumed to exclude "mother" notwithstanding that the "father" is alive. This view of the Court is fortified from the provision of 2(1)(d)(iii)(h) quoted above, by which a "paternal grandparent" becomes dependent if no "parent" of the employee is alive. The word "parent" used in section 2(1)(d) cannot construed and/or interpreted to mean "parents" in exclusion of "parent". Therefore, notwithstanding whether or not the father of the deceased and/or husband of the respondent nos. 3 and 4 are alive, the word "parent" as used in section 2(1)(d) of the Employees Compensation Act, 1923 is held to include the mother of the deceased. Moreso, the Employees' Compensation Act, 1923 is a beneficial legislation to enable dependents to get compensation to the dependent family member as a succor on the death of an employee.

10. Moreover, the learned senior counsel for the petitioner could not show that the respondent nos. 3 and 4 were cross-examined on the point.

11. Therefore, the first point raised by the learned senior counsel for the petitioner is answered in the affirmative in light of section 2(1)(d)(iii)(b) of Employee's Compensation Act, 1923 by holding that the respondent nos. 3 and 4, being the "mother" of their respective deceased sons, would be a "parent" and would come within the meaning of "dependant", and resultantly, the

respondent nos.3 and 4 would be entitled to claim compensation.

12. In so far as the other point is concerned that it was a case of electricity accident which caused the fire and resulted in death of the two deceased, the Court is of the considered opinion that the said issue requires examination of factual matrix as well as evidence, which can be efficaciously be determined in statutory appeal, which is prescribed under section 30 of the Employees Compensation Act, 1923. Such a determination cannot be effectually done in a writ petition filed under Article 226 of the Constitution of India.

13. The learned senior counsel for the petitioner has referred to the case of *A.V. Venkateswaran (supra)*. In the said case factual matrix was that a pen was imported with certain parts like nib, tip and cap made of gold and silver and accordingly the authorities charged the duty on pen under item 61(8). The writ petition was dismissed by the High Court and the Supreme Court of India had held that as the imported pen fell within the category of "*Fountain pens, (complete)*" under item 45(3), it was held that the writ petition could have been entertained. In the case of *Ram and Shyam Company (supra)*, the appellant before the Supreme Court of India was allotted a mining lease and despite the bid of the petitioner being the highest, the State settled the contract with the respondent no. 4. Under such circumstances, when the Supreme Court of India had required the parties to state their offers, there was a huge increase in the minimum rate offered by the contesting parties. Hence, the Supreme Court of India had observed that the writ petition would lie under such circumstances so as to ensure that the best price and larger revenue would come into the coffers of the State. Accordingly, it was held that it was open to the appellant to file a

writ petition as there was political interference in the settlement of the mining lease. Thus, the said two cases cited by the learned senior counsel for the petitioners are not the authority on the point that irrespective of statutory provisions for appeal, the High Court should entertain all writ petitions where award under Employee's Compensation are challenged.

14. Therefore, the Court is disinclined to examine the correctness of the judgment and award dated 13.03.2023, passed by the Commissioner, Employee's Compensation, Nagaon in *NEC Case No.1/2017- Hamida Khatun and Ors. v. Jalal Uddin*. Hence, if so advised, the petitioner is at liberty to file an appeal under section 30 of the Employees Compensation Act, 1923 against the award impugned in this writ petition.

15. In this case, as the learned senior counsel for the petitioner had insisted that the challenge made in this writ petition be heard, the issue of locus of the claimants, which can be decided on the basis of the statutory provision of Section 2(1)(d) of the Employee's Compensation Act, 1923, has been examined under Article 226 of the Constitution of India and accordingly, it has been held that the claim at the instance of the respondent nos. 3 and 4, who are the mothers of the two deceased is maintainable in law. The said point is answered in the affirmative and against the petitioner.

16. In view of the discussions above, the writ petition stands dismissed, however, by grating liberty to the petitioner to file an appeal, if so advised.

17. The Registry shall transmit a copy of this order to the Commissioner,

Employees Compensation, Nagaon to make it a part of the record of *NEC Case No.1/2017- Hamida Khatun and Ors. v. Jalal Uddin*, which was decided by judgment and award dated 13.03.2023 passed by the Commissioner, Employee's Compensation, Nagaon.

18. The writ petition was filed on 07.06.2023. Therefore, the petitioner shall be entitled to the exclusion of time from 07.06.2023 till the order passed today as time spent in the Court.

JUDGE

Comparing Assistant