

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 324 of 2014

Appellant :- Executive Engineer Electricity Distribution
Div.And Ors.

Respondent :- Mukhtar Ahmad

Counsel for Appellant :- M.P.Yadav,Abhinav Singh,Santosh
Kumar Mishra

Counsel for Respondent :- Girish Kumar Kannoja

Hon'ble Jaspreet Singh,J.

1. Heard Shri Abhinav Singh, learned counsel for the appellants and Shri Girish Kumar Kannoja, learned counsel for the respondent.

2. The instant appeal has been preferred under Section 30 of the Employee's Compensation Act, 1923 against the judgement dated 24.01.2014 passed by the Commissioner Workmen Compensation in W.C. No.8 of 2009, whereby the claim of the respondent has been allowed and a sum of Rs.3,24,448.80/- has been awarded in favour of the respondent.

3. Learned counsel for the parties have been heard and the appeal involves substantial questions of law upon which the appeal has been heard is being noticed hereinafter:-

(i) *"Whether there was any relationship of employer and employee between the appellants and the respondent."*

(ii) *"Whether the findings given by the Workmen Compensation Commissioner regarding the compensation is based on conjecture and surmises and against the material on record."*

4. The counsel for the appellants while pressing his appeal has primarily urged that there was no material on record to indicate that there was any relationship of employer and employee

between the appellants and the respondent. It was the admitted case of the respondent that he has no letter appointing him nor there was any record to indicate that he was paid his salary by the appellants and in this view of the matter, there could be no relationship between the appellants and the respondent and this aspect has been ignored by the Workmen Compensation Commissioner and its findings are based on surmises and conjecture.

5. It is further urged that much emphasis was laid by the Workmen Compensation Commissioner to address the issue regarding the relationship of employer and employee but while arriving at its conclusion, it has failed to notice that in absence of any clear evidence the finding returned on the relationship was based on pure surmises.

6. It is further urged by the learned counsel for the appellants that there was no material available on record to indicate the nature of injuries suffered by the respondent as well as the fact that there was no evidence which indicated that the respondent suffered from any disability. Accordingly, the Workmen Compensation Commissioner erred in awarding a sum of Rs.3,24,448.80/- and as such the findings on both the issues are perverse and are liable to be set aside after allowing the appeal and dismissing the claim of the respondent.

7. Shri Girish Kumar, learned counsel appearing for the respondent has urged that from the material available on record including the deposition of the witnesses examined on behalf of the appellants, it would be clear that the respondent was working as a daily wager. He was thus an employee. It is further urged that the respondent was undertaking the duties assigned to a lineman and on the given date i.e. on 01.02.2008 in presence of the appellant no.2, the respondent was attending to

an electricity complaint and while he was rectifying the same on a electric pole, he was electrocuted and suffered severe burn injuries and he was also disabled and for the aforesaid reasons, when the respondent filed the claim, the appellants have taken a plea that the respondent was not the employee. It is further submitted that even from the cross-examination of the witnesses examined on behalf of the appellants, it was clear that the claimant was working under the guidance of the appellants and thus the appellants cannot shirk from their responsibility of making the payment which has been determined by the Workmen Compensation Commissioner.

8. It is further urged that from the deposition of the witnesses examined on behalf of the appellants, there is a clear statement made by the witness that on the compliant book the signatures of the respondents were present and moreover when the respondent made an application to get the original records summoned, the appellants evaded the issue by stating that the original record was lost and an FIR in this regard has been lodged. Thus, the document which could easily establish the relationship of employer and employee between the parties was deliberately withheld by the appellants and as such an adverse inference ought to have been drawn against the appellants.

9. It is further urged that the respondent had also lodged an FIR regarding the incident wherein the appellant no.2 was chargesheeted and is facing trial. The appellants had filed the aforesaid document on record of the case of the Workmen Compensation Commissioner including the photocopy of the complaint book which contained the signatures of the respondent including document to substantiate the injuries and the treatment availed by the respondent and it is considering the aforesaid that Workmen Compensation Commissioner has

passed the award in favour of the respondent which is based on proper appreciation of evidence and as such the appeal deserves to be dismissed.

10. The Court has heard the learned counsel for the parties at length and has also perused the material on record.

11. At the outset, it may be noticed that the first issue that needs to be considered is the fact as to whether there was any relationship between the claimant-respondent and the employer-appellants.

12. In this regard, it would be seen that the claimant had stated that he has been working along with the appellant no.2 regarding electrical work and the respondent was paid Rs.100/- per day and Rs.80/- towards diet everyday. It was further urged by him that on the fateful day i.e. 01.04.2008 at around 11:00 A.M. lineman, namely, Umesh Chandra Pandey, who is the appellant no.2 had taken the respondent along with him to address a complaint in Village - Rauhtaba. Since the claimant had climbed the pole and was attempting to rectify the fault, suddenly, the power line was energized as a result the claimant was electrocuted and he fell from a height of about six feet and his body was severely burnt. The appellant no.2 had taken the claimant to the District Hospital from where he was referred to a higher centre at Lucknow and during his treatment he had lost his right hand and life of the claimant was jeopardized. In respect of the said incident, an FIR bearing Case Crime No.152 of 2008, under Sections 337 and 338 of the IPC was lodged and the appellants no.2 and 3 have been chargesheeted and are facing trial. It was also stated that the appellants had to spend about five lacks rupees on his treatment and with the aforesaid, the claim came to be filed under the provisions of Employees' Compensation Act, 1923 registered as W.C. No. 8 of 2009.

13. The claimant in order to substantiate his case examined himself as a witness and also examined one Shri Jangali, who is also stated to be an eyewitness. The claimant has reiterated his contents as stated in the claim, however, insofar as the appellants are concerned. They examined their witnesses, namely, R.S. Verma and Umesh Chandnra Pandey.

14. The statement of the Jangali, if, perused would indicate that he was at the given time harvesting his wheat crop and from a distance he saw that there was some sparking from the pole and he further saw that the respondent fell from the pole and he had suffered electrocution and burn injuries. Apart from this incident, he did not give any positive statement regarding the relationship of employer and employee between the appellant and the respondent. However, one additional fact which was confirmed by Shri Jangali was the presence of the appellant no.2 at the site.

15. In the aforesaid backdrop, the core issue regarding relationship of employer and employee is concerned, it would be seen that it was admitted to the respondent that there was no formal letter of appointment given by the Electricity Department though he stated that he was working with the appellant no.2 and it was in the knowledge of the other appellant as well but mere casual reference to the above is not going to forge a relationship of employer and employee. Even if at all it is noticed that the respondent was working with the appellant no.2 but then that would have been purely in the capacity of a private assistant of the appellant no.2 and that too against the provisions and rules of the department and such relationship between the appellant no.2 and the respondent cannot be extended and binding on the electricity department. If at all there was any case the same could have been filed only

against the appellant no.2 as there was no relationship between the appellants and the respondent.

16. The submission made by the learned counsel for the respondent that the respondent was attending the electricity complaints for the last 5 to 6 years along with the appellant no.2 and he had been signing the complaint book and it is further alleged that the photocopy of the same was filed in the case before the Workmen Compensation Commissioner and the same was also confronted to the appellants-witnesses, who also stated that in the complaint book on all the pages, there are signatures of the respondent. It is urged that this is an important piece of evidence which clearly establishes the case of the respondent including the relationship and this has also been taken note of by the Workmen Compensation Commissioner while allowing the claim and at this stage, it is not open for the appellants to deny.

17. Apparently, the aforesaid argument sounds attractive but from the perusal of the original record which is before the Court, it would be found that there is no such complaint book on record. Much reliance has been placed by the counsel for the respondent on the FIR, the injury received by him, the disability certificate, documents relating to his treatment in the hospital, the expenses incurred by him are all not on the record. Another important aspect that needs to be seen is, despite, the aforesaid even from the perusal of the ordersheet, it does not indicate that the aforesaid documents were filed by the claimant-respondent before the Workmen Compensation Commissioner. In absence of any such document on record, the contention of the respondent cannot be appreciated and all that can be said is the fact that though Workmen Compensation Commissioner in its judgement has referred to such complaint book / attendance

register but the original record placed before the Court only indicates that a photocopy of an attendance register which does not have the name or the signatures of the respondent is available and insofar as the complaint book is concerned, the same is not on record. Thus, the finding returned by the Workmen Compensation Commissioner appears to be doubtful. This Court further finds that it has ignored the evidence of the other witness on behalf of the appellant, namely, Rama Kant Pandey solely on the ground that he used to visit the shop of the respondent and used to eat betel leaves (Pan).

18. The Workmen Compensation Commissioner also found that since Jangali had stated that the appellant no.2 was present and in his presence, the respondent had climbed the pole from where he suffered injuries after electrocution, this was enough to create the relationship. This perhaps in light of the evidence available on record does not prove the relationship between the employer and the employee. Even though noticing the fact that the Employee's Compensation Act, 1923 is a social beneficial legislation and is required to be given liberal interpretation. Even then this Court is unable to persuade itself to hold that there was any relationship of employer and employee in the given facts situation where the complainant himself admitted that neither he was appointed by the department and even though he alleges that he was a daily wager there is nothing on record to indicate that the salary for the daily wages was paid to the claimant by the department. His only statement is that the appellant no.2 used to take him along with him for addressing the electrical faults and from the money received from the persons whose complaints were addressed, the same was handed over to the claimant. This in any case does not create any jural relationship of employer and employee between the appellant and the respondent. Thus, this Court finds that the

finding returned by the Workmen Compensation Commission on the issue of relationship between the appellants and the respondent as employer and employee is not made out and is also not within the purview of the provisions of the Act of 1923. Thus, the same cannot be sustained and is accordingly set aside.

19. It is further relevant to notice that having said that the relationship of the employer and the employee does not subsist even then there is nothing on record to indicate that as to how the Workmen Compensation Commissioner calculated the compensation amount of Rs.3,24,448.80/-. It has taken the statement of the respondent that he was earning Rs.100/- per day and Rs.80/- for his diet and since he was working for about 26 days in a month and having suffered 60% as disability. Hence, considering his age of 30 years has awarded a sum of Rs.3,24,448.80/-. There is no material on record to substantiate that the respondent suffered disability as the disability certificate is not available on the record. There is no document filed by the respondent indicating his treatment either at Faizabad or at Lucknow where he was referred for higher treatment. No document has also been placed on record indicating the cost of the treatment, the purchase of the medicines, hence in this view of the matter, this Court finds that the issue regarding compensation has also not been appropriately considered by the Workmen Compensation Commissioner and his findings are based on pure surmises and conjectures which cannot be sustained and is against the weight of the evidence on record.

20. For the aforesaid reasons, this Court finds that the award passed by the Workmen Compensation Commissioner in W.C. Case No.8 of 2009, dated 25.01.2014 cannot be sustained and is

set aside. The claim under the Employee's Compensation Act, 1923 is **dismissed**. The appeal is **allowed**. Costs are made easy. The record of the Workmen Compensation Commissioner shall be returned forthwith.

21. It is made clear that dismissal of the claim under the Employee's Compensation Act, 1923 shall not come in the way of the respondent if he is entitled to claim compensation under any other law for the time being/ rule or circular issued by the Electricity Department which shall be considered on its own merits.

Order Date :- 12.12.2023

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