

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 5707 of 2011 (O&M)

Date of decision: 19.08.2015

Mukesh Walia and another

...APPELLANTS

VS.

Santosh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Parminder Singh, Advocate,
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

1. This appeal has been filed by the appellants, who are the owners of Dhruv Public School Fatehpur Pundri, District Kaithal, for which they had entered into a contract with respondent No. 5 M/s Anirudh Construction Fatehpur Pundri, of which respondent No. 3-Kirpal Singh is partner as also Umesh Kumar (not party by name) for construction of the school. The said M/s Anirudh Construction Fatehpur Pundri-respondent No. 5 engaged one Sh. Bajrang Rai as a sub-contractor for the shuttering work-respondent No. 2 and Kala Singh-respondent No. 4 for binding the lintel (iron rods/bars). One labourer, namely, Mahipal, who was employed to bind the *saria* (iron rods/bars) for the lintel shuttering fell down from the

same because of the collapse of the shuttering along with few other labourers, which resulted in his death and injuries to others. On a claim application filed by Santosh widow of deceased Mahi Pal-respondent No. 1 under Section 12 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the 1923 Act'), the same was allowed holding Santosh-widow (respondent No. 1) and Lichho Devi-mother (respondent No. 10) entitled to compensation and interest as assessed in equal shares and the appellants liable to pay the same.

2 This order passed by the Commissioner under the 1923 Act, Kaithal dated 21.07.2011 stands challenged by the appellants on the ground that they are not liable to pay the compensation and interest as they had engaged respondents No. 3 and 5 for the construction of the school building, which fact has been admitted by respondent No.2 in his evidence, which was in the form of an affidavit Ex. RW1/A as also Kirpal Singh-respondent No. 3 as Ex. RW2/A. He, therefore, contends that once a contract for construction has been given to respondent No. 5 of which respondent No. 2 is a partner and has signed the same as such, the liability as has been fixed upon the appellants by the impugned order, cannot be sustained. In support of this contention, counsel for the appellants has placed reliance upon the judgments of this Court in **M/s Vinayak International vs. Smt. Urmila Devi and others**, 2012 (1) PLR 76, where in a similar case contract for construction was given to a contractor and an accident has occurred during the process of construction. The liability, as has been imposed upon the principal employer who had given contract of construction, was held to be not sustainable on the ground that as per Section 12 of the 1923 Act, when the principal work of the principal

employer was not related to construction work, no liability can be imposed. He, on this basis, contends that in the present case, the vocation of the appellants, is teaching/imparting education, which has no relation with the construction work, for which the contractor was engaged and he had further engaged sub-contractor and during the work being executed by the sub-contractor, the accident had occurred and, therefore, there would be no liability, which could be imposed upon the appellants.

3. This contention of the counsel for the appellants has been contested by the counsel for the respondents, who has referred to the cross-examination of RW2-Kirpal Singh and RW-3 Mukesh Walia. He, on the basis of these cross-examinations, submits that all the witnesses have stated that there was initially a contract entered into but thereafter, was cancelled and not acted upon but he could not deny the fact that in the affidavit, referred to above, on which reliance has been placed by the counsel for the appellants, the factum of contract of construction having been entered into and work assigned and being executed by respondents No. 2 to 5 has not been denied and rather admitted. He has placed reliance upon the judgments of the Supreme Court in the cases of **M.S.Grewal vs. Deep Chand Sood**, 2002 (1) RCR (Civil) 214, **Bhilwara Dugdh Utpadak Sahakari S. Ltd. vs. Vinod Kumar Sharma Dead by LRs and others**, 2011 (15) SCC 209, and judgments of the Karnataka High Court in the cases of **The Divisional Manager, New India Insurance Co. Bangalore vs. Dasara Honnuraswamy**, 2007 (2) SCT 128 and **Ashok B. Sureban vs. Neelavva and others**, 2002 ACJ 775. On this basis, he contends that the order passed by the Commissioner under the 1923 Act is in accordance with law and does not call for any interference.

4. On considering the submissions made by the counsel for the parties and with their assistance having gone through the impugned order and the records of the case, the contention, as raised by the counsel for the respondents, cannot be accepted for the simple reason that as per Section 12 of the 1923 Act, where the principal employer is liable to pay compensation, he shall be entitled to be indemnified by the contractor, from whom the workman could have recovered compensation.

5. Section 12 of the 1923 Act reads as follows:-

“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.”

6. As is apparent from the pleadings of the parties and the evidence led therein, an accident had taken place on 14.03.2004 where the shuttering collapsed resulting in falling down of labourer-Mahi Pal, who was engaged for binding the iron rods/bars (*saria*) for the lintel shuttering. Sh. Kala Singh-respondent No. 4, who, in turn, was engaged by Sh. Bajrang Rai-respondent No. 2 as sub-contractor for shuttering work by M/s Anirudh Construction Fatehpur Pundri-respondent No. 5, which had taken the contract for construction of the school building of the appellants. The execution of the contract between the appellants and respondents No. 3 and 5 have been duly proved and admitted.

7. The question to be determined in the present case is whether the appellants are entitled to be indemnified by respondents No. 2 to 5 for the liability, which has been foisted on them as per the impugned order dated 21.07.2011 passed by the Commissioner as the counsel for the appellants as well as respondents No. 2 to 5 have not disputed the entitlement of the claim granted in favour of respondent No. 1-Santosh widow of the deceased Mahi Pal and the performa respondent No. 10-

Lichho Devi, mother of the deceased Mahi Pal. The arguments have primarily been addressed by the counsel for the parties on this issue only.

8. Counsel for the appellants has placed reliance upon the judgments of the Madras High Court in **Commander Headquarters, Coast Guard Region (East) vs. Vijaya and another**, 2008 ACJ 169 as also the judgment of the Division Bench of the Kerala High Court in **K.Kodalingam vs. Superintending Engineer Project Circle Public Works Deptt. and another**, 1995 (6) SLR 190 apart from the judgment of this Court in **M/s Vinayak International's case (supra)**, to contend that the principal employer is liable to pay compensation only for any work where the employee has been engaged in the course of or for the purpose of his trade or business contracts with any other person, which is ordinarily part of the trade or business of the principal, the principal would be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation. He contends that it was specific stand of the appellants before the Commissioner that the construction of the building is not part of the activities of the appellants and it is an educational society, which is engaged in imparting education and promoting cultural activities only. Respondents No. 3 and 5 were engaged for construction of the building of the school for which the contract was given to them and respondents No. 2 and 4 were engaged by these respondents for erecting the shuttering and for binding the lintel respectively. He, thus, contends that the appellants are entitled to reimbursement of the liability as per Section 12 (2) of the 1923 Act.

9. On the other hand, counsel for the respondents has, while referring to the judgment in the case of **M.S.Grewal (supra)**, asserted that

the vicarious liability is that of the appellants as the work was being performed for the benefit of the appellants by respondents No. 2 to 5 i.e. construction of the school, which would have ultimately being beneficial to them. Referring to the other judgment of the Supreme Court in **Bhilwara Dugdh Utpadak Sahakari S. Ltd. (supra)**, he contends that the appellants cannot run away from the liability as imposed upon them under the labour Statute where the protection has been granted to the employees/workmen so that they may not be exploited. He has placed reliance upon the judgments of the Karnataka High Court i.e. **The Divisional Manager, New India Insurance Co. Bangalore (supra)** to contend that since the accident had taken place in the school site where the construction was being carried out, the principal employer is liable for payment of compensation and in **Ashok B. Sureban (supra)**, to contend that where no issue was framed by the Commissioner with regard to the entitlement of indemnification of the awarded amount, no liability can be imposed upon in an appeal.

10. None of these judgments would be of any help as far as the case of the contesting respondents is concerned as the same are clearly distinguishable. **M.S.Grewal's case (supra)** was with regard to the maintainability of a writ for compensation and further the vicarious liability, where the relationship of the master and servant was duly established. It was a case where the school teachers were entrusted with the duty to take care of the children while on picnic spot along river side. The teachers had acted in a rash and negligent manner resulting in the death of the children by drowning in the river. It is in this context, the Hon'ble Supreme Court held that the school establishment cannot escape from the vicarious liability only because the negligence was exclusively and personally attributed to the

teachers concerned.

11. In **Bhilwara Dugdh Utpadak Sahakari S. Ltd. (supra)**, the appellant had made an effort to show that the employee was not their employee but that of a contractor, which plea was negated by the Supreme Court on the ground that the Labour Court had held that the workmen were the employees of the appellant, which finding was found to be based upon the cogent reasons, which fact is not the same in the present case.

12. In **The Divisional Manager, New India Insurance Co. Bangalore (supra)**, the Insurance Company had taken a plea that it was liable to compensate in a situation where the accident had taken place at the site of work and not where the injuries were sustained by the workers in a road accident, which was beyond the policy with regard to the coverage of risk, which is not the case here.

13. In **Ashok B. Sureban (supra)**, what has been held by the Karnataka High Court was that the plea of indemnification had not been asserted before the Commissioner and the same could not be raised at the appellate stage for the first time when there were no pleadings nor any evidence was led in this regard and issue was also not framed and, therefore, the principal employer was held not entitled to indemnification from the contractor/sub-contractor. Present is a case where a specific plea has been taken by the appellants in the reply filed by them and raised in arguments which has been dealt with by the Commissioner in his impugned order dated 21.07.2011 where the said plea has been rejected merely at the whims and fancies as no reason has been assigned for such rejection. Thus, this judgment also cannot be said to be of any help to the respondents.

14. As has come in the pleadings and the evidence on record that a contract was entered into between the appellants and respondents No. 3 and 5 on the one hand for construction of the school building and then respondent No. 2 was engaged by respondents No. 3 and 5 as sub-contractor, who had further engaged respondent No. 4 for binding the lintel, who engaged Mahi Pal deceased for binding the iron rods/bars (*saria*) for the lintel. The liability, therefore, would be of these respondents along with the appellants qua the dependents of the deceased Mahi Pal i.e. respondents No. 1 and 10 widow and mother respectively but inter-se the liability when seen in the light of Section 12 (2) of the 1923 Act, the appellants are held entitled to reimbursement in the light of the judgments relied upon by the counsel for the appellants i.e. **M/s Vinayak International** (supra), **Commander Headquarters, Coast Guard Region (East)** (supra) and **K.Kodalingam** (supra).

15. In view of the above, the present appeal is allowed partly to the extent that the appellants are held entitled to be indemnified by respondents No. 2 to 5 for the compensation and interest granted in favour of respondents No. 1 and 10 as per the impugned order dated 21.07.2011 passed by the Commissioner under the Workmen's Compensation Act, Kaithal.

August 19, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE