

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 1328 of 2013

Date of decision: 10.08.2015

Kashmiri and others

...APPELLANTS

VS.

M/s Sharda Enterprises

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ram Bilas Gupta, Advocate,
for the appellants.

Mr. Jawinder Randhawa, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

The present appeal has been filed by the claimants whose application for compensation under the Employees Compensation Act, 2003 (hereinafter referred to as '2003 Act') stands dismissed.

It is the contention of the counsel for the appellants that deceased Prem Chand was working with M/s Sharda Enterprises (Sharda Technical Services). On 24.12.2010, while he was working with the respondents, he met with an accident at the work place where an heavy iron channel fell on him in the presence of co-workmen. No police report was filed nor was any postmortem got conducted. An assurance was given by Sh. B.K.Singh, proprietor of M/s Sharda Enterprises (Sharda Technical

Services) (respondent herein) that he would make adequate and sufficient compensation within 15 days. When the said assurance was not honoured and several visits made by the claimants did not yield any result and even complaint made to the Deputy Commissioner, Faridabad, failed to redress the grievance, they have filed the application claiming the compensation under the 2003 Act.

Counsel contends that the evidence has been led by the appellants, according to which, the co-worker of the deceased Prem Chand i.e. Sh. Sh. Bhajan Lal-AW1, stated that Sh. Prem Chand met with an accident on 24.12.2010 at about 3.30 P.M. and suffered head injury. At the time of his death, he was drawing ₹ 16,000/- per month. In cross-examination, he stated that he is son-in-law of the deceased and that he had no proof regarding employment with the respondents. He also admitted that no complaint was ever made to the Government department with regard to non-providing of any employment proof and also admitted that the rate of wages was told by him on the basis of the hear say only.

AW2-Ranjit Singh has been produced, who was performing the job of a Welder with Sharda Enterprises (Sharda Technical Services) when the accident took place. He also stated that there was no documentary proof that the deceased Prem Chand was working with the respondents. However, he stated that the proprietor of the company had assured that the compensation would be paid to the family of the deceased. In cross-examination, he stated that he is working in a project under the son of the deceased Sh. Prem Chand Sharma, who is contractor there and that he did not make any complaint against the respondents with regard to the non-providing of employment proof.

AW3-Naresh, who is the son of the deceased deposed that he was getting salary of ₹ 15,000/16,000/- per month. When he came to know about the death of his father, he reached Sarvodaya Hospital where he came to know that they had already departed for Ballabgarh. He also reached there to join the cremation of his father. The proprietor of the company assured that adequate compensation would be granted to them. He admitted that he was not residing with his father and the complaint was made by his elder brother Mr. Shri Pal to Deputy Commissioner, Faridabad. AW4-Mr. Shri Pal tendered documents marked 'A' to 'O' and he admitted in his cross-examination that he did not have the original documents.

Respondents have also led evidence, according to which, they deposed that Sh. Prem Chand was not an employee of the respondents and rather asserted that he had never worked with the respondents. No accident had ever taken place in the company. The attendance register from August, 2010 to March, 2011 was produced as Ex.RW-1/A and Ex. RW-1/B. He stated that the said documents were not prepared by him but by the Accountant.

Counsel for the appellants states that the respondents have not been able to prove that Sh. Prem Chand was not an employee with the respondents as they have not been able to produce any evidence with regard to the authenticity of the attendance register and the entries made therein. He contends that the death certificate, which has been produced on record as Mark 'N' was prepared after a proper enquiry and, therefore, the said documents should have been taken into consideration, which have been marked as 'A' to 'O'. He thus, contends that the Award passed by the

Commissioner is not sustainable.

On the other hand, counsel for the respondent has asserted that the onus to prove the fact that the deceased was an employee of the respondent and that the accident has taken place at the work place during employment was on the claimants, which onus they have failed to discharge. That apart, the documents marked as 'A' to 'O' cannot be relied upon as none of the authors have been produced. These documents are stated to be Government documents but no official from the department has been produced to prove these documents. He contends that the Award passed by the Commissioner dated 30.12.2012 being in consonance with the provisions of the Statute cannot be said to be unsustainable.

I have considered the submissions made by the counsel for the parties and have gone through the records of the case.

The appellants have miserably failed to prove that the deceased Prem Chand was an employee of the respondent nor have they been able to prove that an accident has taken place during employment in the premises of the respondent as per their assertions. No agreement has been produced on record between the appellants and the proprietor of the respondent, which was made the basis for non-registration of the FIR with regard to the accident and for non-conduct of the postmortem of the deceased. Nothing has been produced on record to prove that there was any injury caused on person of deceased Prem Chand. In the case of an unnatural death, postmortem was required to be conducted as it is a very important document. The assertion has been made that the deceased was taken to the Sarvodya Hospital but no evidence has been produced on record with regard to he having been brought to the hospital and that some treatment was given

to him nor has any doctor been produced to prove that he was brought dead. None of the documents, which have been produced in evidence, have been proved and the same are mere photocopies and, therefore, cannot be relied upon. In any case, those certificates do not indicate that the death had taken place in the premises of the respondent what to say of during employment, which is the requirement for grant of compensation under the 2003 Act. The Award passed by the Commissioner dated 31.08.2012, in the considered opinion of this Court, is in accordance with law, which does not call for any interference.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

August 10, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE