

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A.(C) No. 132 of 2010**

1. Punit Ram Nishad S/o Sukhram Nishad,

2. Motim Bai W/o Punit Ram Nishad,

Both resident of Village-Umradah, Post-Belmand, PS &
Tahsil Balod, District Durg (CG)

---- Appellants**Versus**

1. Mohan Lal Jain S/o Girdhari Lal Jain, R/o village
Umradah, Post Belmand, PS & Tahsil Balod, District
Durg (CG)

2. Smt. Lata Jain W/o Shri Mohan Lal Jain, R/o Village-
Umradah, Post-Belmand, PS & Tahsil Balod, District
Durg (CG)

3. Girdhari Lal Jain S/o unknown, R/o Village-Umradah,
Post-Belmand, PS & Tahsil Balod, District Durg (CG)

---- Respondents

For Appellants	:	Shri C. K. Sahu, Advocate
For Respondents	:	Shri Alok Bakshi, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/06/2016**

The instant appeal has been preferred by the appellant/claimants under section 30 of the Workmen's Compensation Act, 1923 assailing the order dated 12.11.2009 passed by the Commissioner for Workmen's Compensation/Labour Court, Durg in Case No. 125/WC Act

fatal/2005 whereby the learned Commissioner has rejected the claim of the claimants.

2. Facts leading to the filing of the appeal is that the son of the appellants namely Santram Nishad (hereinafter referred as 'the deceased') aged about 21 years died on 30.07.2005 while working as a labour in the field of the respondents. It is said that the deceased died because of electrocution on account of the deceased coming in contact with live electric wire lying in the field of the respondents. Subsequently, an FIR was also lodged and a case under Section 304A of IPC was registered against the respondents.

3. Meanwhile, the present appellants who are the parents of the deceased filed a claim application before the Commissioner for Workmen's Compensation/Labour Court, Durg on 13.09.2005 seeking for compensation under the provisions of Workmen's Compensation Act, 1923. Initially the claim application was filed only against the respondent no.1 Mohan Lal Jain but subsequently, by way of amendment, respondents 2 & 3 who are the wife and father of respondent no.1 respectively were also impleaded as respondents in the claim application.

4. After pleadings were complete and the recording of the evidence was over, the Labour Court vide impugned order dated 12.11.2009 rejected the claim application holding that the appellants have failed to prove their case that the deceased had died in the course of and arising out of his

employment. The Court below further held that the appellants have also failed to establish the fact that the death occurred because of an accident that arose in the course of employment with the respondents. The Labour Court also reached to the conclusion that the appellants have not proved the employment of the deceased with the person in whose name the land was where the accident occurred. It is this order dated 12.11.2009 which is assailed in the present appeal.

5. This Court on 20.07.2010 admitted the appeal on the following substantial question of law:-

“Whether the Commissioner for Workmen's Compensation has committed an error of law by dismissing the claim petition submitted by the appellants?”

6. Counsel for the appellants assailing the impugned order submits that the Labour Court has failed to take note of the fact that the accident stood proved from the very fact that the respondents were prosecuted for the offence under Section 304A of IPC. He submits that the deceased was working in the field of the respondents as one of their workers is not disputed which is also evident from the criminal case which was registered against the respondents for the offence under Section 304A IPC. The said averment also gets strengthened from the evidence of the co-workers who were working with the deceased for example PW-2 Roshanlal. Counsel for the

appellants further submits that the learned Commissioner had, in fact, initially passed an award on 24.03.2008 granting compensation of Rs.1,73,713/- to the claimants but subsequently, the said order was recalled as it was an ex parte order and after hearing the other side, now vide the impugned order the Commissioner rejected the claim of the appellants. This according to the counsel for the appellants was not proper, just and legal for the reason that when in the given set of facts and circumstances of the case the Court below at the first instance on 24.03.2008 had passed an award in favour of the appellant/claimants, there was no reason why the claim application ought not to have been allowed even subsequently. Therefore, the impugned order deserves to be set aside. Counsel for the appellants also makes a prayer that the matter is required to be remitted back to the Court below for fresh adjudication based on the evidence which has come on record.

7. Per contra, counsel appearing for the respondents prayed for rejection of the appeal on the ground that in fact, all the contentions and submissions raised by the counsel for the appellants are all matters of facts which have been thrashed out threadbare in the evidence and after appreciating the entire evidence led by the appellants the Court below had passed the award rejecting the claim. According to the counsel for the respondents, these submissions which have been made by the counsel for the

appellants cannot be considered to be substantial question of law rather are all matter of facts and Sub-section 30 of the Workmen's Compensation Act specifically enumerates that an appeal against the order of the Commissioner for Workmen's Compensation only survive in case there is a substantial question of law. According to the respondents, in the instant case, since no substantial question of law has been made out by the appellants, the appeal deserves to be rejected.

8. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the record what is an admitted position is that the appellants have not been able to establish the fact that as to how the deceased met with an accident. They have also failed to establish the most essential aspect of the accident to have occurred in the course of and arising out of employment. There is an evidence come on record which says that the deceased was not engaged for carrying out any electric work. Another aspect which cannot be ignored is that though the counsel for the appellant is stressing hard on the criminal case which was lodged against the respondents for the offence under Section 304 A IPC but the said criminal case ultimately concluded in the acquittal of the appellant of the offence under Section 304 A IPC. This fact gives rise to doubt firstly with regards the employment of the deceased with the respondents, secondly whether the respondents were negligent at any point of time, thirdly whether the death of the deceased occurred because of

the live wire to which he came in contact being laid as per the instructions of the respondent employer and lastly whether the nature of the duties performed by the deceased had any causal connection with the death.

9. So far as the claim under Workmen's Compensation Act is concerned, the most important ingredient required for establishing a case under the Workmen's Compensation Act is that there should be an accident and in the course of the accident the claimant must sustain injuries and the accident also has to be arising out of and in the course of his employment. So far as the accident is concerned, it is undisputed and the injuries sustained in the said accident is also undisputed. However, it was simultaneously equally important for the claimant to have also proved and established before the Court that the accident arose out of the employment. Merely an accident in the course of an employment would not by itself alone entitle the claimant to claim for compensation. It has also to be proved at the same time that the accident arose out of the employment which the worker was engaged for. This essential ingredient has to be proved by the claimant for being entitled for compensation under the provisions of the Workmen's Compensation Act. In the instant case it is this very quintessential ingredient which is missing from the evidence which has been adduced by the appellants and without which the Commissioner could not have allowed the claim application.

10. For the foregoing reasons, the substantial question of law framed by this Court is answered in the negative holding that the learned Commissioner has not committed any error on law or on facts while rejecting the claim application of the appellants.

11. Accordingly, the present Misc. Appeal being devoid of merit deserves to be and is dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**