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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal No.2 of 2006

1. Uttara Bai, Wd/o Hari Rathiya, aged about 37 years,
2. Minor Atwar Singh, S/o Late Hari Rathiya, aged about 17 years,
3. Minor Ratthuram, S/o Late Hari Rathiya, aged about 11 years,
4. Minor Guddi, D/o Late Hari Rathiya, aged about 6 years,

Appellants No.2, 3 and 4 through guardian mother Uttara Bai, all residents of Village Saras Mal (Kosampali), P.S. Tamnar, Tahsil Gharghora, District Raigarh, Chhattisgarh

---Appellants

versus

1. Chief Medical Officer (C.M.O.), C.M.O. Office, Bhagwanpur, Tahsil and District Raigarh, Chhattisgarh
2. State of Chhattisgarh, through Collector, Raigarh, Chhattisgarh
3. Secretary, Department of Health and Family Welfare, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Shri R.K. Pali, Advocate
For Respondents/State	:	Shri Yashwant Singh Thakur, Deputy Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

24/6/2016

1. This appeal by the Claimants is directed against the award dated 29.11.2005 passed by the Commissioner, Workmen's Compensation, Labour Court, Raigarh (henceforth 'the Commissioner') in Case No.62/W.C.Act/2004 (Fatal), whereby the Commissioner dismissed the Claimants' claim petition.
2. When the appeal was admitted for hearing, no question of law was framed and, therefore, I shall frame a substantial question of law during hearing of the appeal after noting the facts.

3. Briefly stated the facts of the case are that the Claimants, who are the widow, two minor sons and one minor daughter of late Hari Rathiya filed a claim petition that Hari Rathiya was working with the Respondents/State as a Field Worker/Labour for spraying D.D.T. powder under the scheme of Health and Family Welfare Department of Government of Chhattisgarh. It is further stated that on 5.11.2003, for discharge of his duties, Hari Rathiya along with other labours went to Primary Health Centre, Tamnar, obtained a bag of D.D.T. powder weighing 50 Kgs. from the said Health Centre and loaded the said bag on his bicycle. After loading the bags of D.D.T. powder on their bicycles, each of the workmen/labours including Hari Rathiya proceeded towards Village Kerakhol for spray of the powder there. The allegation of the Claimants is that due to the heavy weight of the bag containing D.D.T. powder being carried by Hari Rathiya on his bicycle, he lost his balance over the bicycle and fell down and as a result thereof he sustained multiple injuries. He was first taken to Primary Health Centre, Tamnar and thereafter he was referred to the Main Hospital, Raigarh, where he unfortunately died on 6.11.2003.

4. The Respondents/State filed a reply to the claim petition in which they took every possible defence. It was urged in the reply that the deceased was not their employee. It was further urged that no appointment letter was issued in favour of the deceased. It was also urged that spraying of D.D.T. powder was a seasonal work. Every averment of the claim petition was denied, but no clear-cut answer was given in the reply whether or not the deceased was actually engaged/employed with the Respondents/State even for a single day for the purpose of spraying D.D.T. powder.

5. The Commissioner, after trial, dismissed the claim petition mainly on two grounds, firstly, that the Claimants failed to show that the death of Hari

Rathiya was caused due to injuries received in an accident and secondly, the Claimants failed to prove that Hari Rathiya was on duty at the time of incident.

6. Keeping in view the averments of the parties, following substantial question of law arises for consideration:

“Whether the finding of the Commissioner, Workmen's Compensation that the Claimants failed to prove that the death of the deceased had any causal connection with his employment is perverse or not?”

7. The widow of the deceased appeared in the witness box and stated that her husband used to work on seasonal basis with the Health and Family Welfare Department for spraying D.D.T. powder. The other witnesses have also stated in similar fashion. Some of the co-workmen have stepped into the witness box and stated that the deceased was carrying a bag containing 50 Kgs. of D.D.T. powder on his bicycle. However, it is correct that none of them saw the incident.

8. The Respondents/State have examined a witness in their defence, namely, Dr. Vijay Diodiya. On the date of incident, the doctor was working in the Health Department. He stated that the work of spraying of D.D.T. powder was conducted by his Department. In cross-examination, he admitted that on 5.11.2003, two bags of D.D.T. powder were supplied to the workmen. He also admitted that each bag of D.D.T. powder weighs 50 Kgs. He also admitted that deceased Hari Rathiya suffered injuries while on duty. He also admitted that after the deceased sustained injuries, he was first taken to Primary Health Centre, Tamnar and thereafter he was referred to Main Hospital at Raigarh. The evidence of this witness produced by the Respondents/State itself clearly shows that the deceased suffered injuries

while on duty. It may be true that during that period, there may not be an eye-witness to the incident. In a case falling under the Workmen's Compensation Act, 1923 now renamed as the Employees' Compensation Act, 1923, it is not necessary to prove negligence. All that is to be proved is that the death occurred due to the accident which took place during the course of and arising out of the employment. It stands proved that the deceased was riding a bicycle on which 50 Kgs. of D.D.T. powder was being carried by him. He suffered injuries due to falling down from the bicycle. He was first taken to Primary Health Centre, Tamnar and thereafter referred to Main Hospital at Raigarh. It also stands proved that though he may not have been a permanent or regular employee of the State, he was working with the State and under the Employees' Compensation Act, 1923. It is not necessary that the deceased worker should be a permanent or regular employee. Therefore, it stands proved that the death of the deceased occurred due to the accident which took place during the course of and out of the employment of the State.

9. The accident occurred on 5.11.2003 and, therefore, compensation has to be assessed as per the law as existed on the fateful day. It is stated that the deceased was earning wages of Rs.2,000/- per month. This appears to be a reasonable though there is no substantial proof of his earning on record. Under the Employees' Compensation Act, 1923, 50% of the monthly wages, i.e., sum of Rs.1,000/- has to be multiplied with the relevant factor. The deceased was aged about 35 years and, therefore, the relevant factor would be 199.40. Therefore, the compensation payable to the Claimants works out at $(Rs.1,000/- \times 199.40 =) Rs.1,99,400/-$.

10. On the amount of compensation of Rs.1,99,400/-, the Claimants shall also be entitled to get simple interest at the rate of 12% per annum from the

date of accident till the realisation of full amount of the compensation.

11. In view of the above discussion, the appeal is allowed. The impugned award of the Commissioner is set aside. The compensation of Rs.1,99,400/- shall be paid to the Claimants by the Respondents/State along with simple interest at the rate of 12% per annum from the date of accident, i.e., 5.11.2003 till the realisation of full amount of the compensation of Rs.1,99,400/-. The amount of compensation is apportioned among the Claimants in the following manner:

Sl. No.	Amount of Compensation Apportioned to	Amount Apportioned (Rs.)
1	To each of the Children/Appellants No.2, 3 and 4 at the rate of Rs.30,000/- (Rs.30,000/- x 3 = Rs.90,000/-)	90,000
2	To the Widow/Appellant No.1	1,09,400
Total =		1,99,400

12. The amount of compensation awarded above shall be deposited by the Respondents/State before the Commissioner within a period of three months from today and the Commissioner, in turn, shall ensure that the amount so deposited by the Respondents/State is distributed by him among the Claimants as apportioned above strictly in accordance with the provision of Section 8 of the Workmen's Compensation Act, 1923 now renamed as the Employees' Compensation Act, 1923.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE