

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 1014 of 2005**

- Mohan Lal Jain, aged about 41 years, S/o Late Jethmal Jain, R/o Tripti Sadan, Tamerpara, Durg, Tah. & Distt. Durg (C.G.) (Non-applicant No.2)

---- Appellant**Versus**

1. Smt.Meena Bai, w/o Tirath Ram Sahoo, aged about 38 years, Resident of Village Urla, Bajrangpara, P.S. Pulgaon, Tahsil and District – Durg (C.G.) (Applicant)
2. Sohan Lal Jain, S/o late Jethmal Jain, aged about 50 years, R/o 34, Mahavir Colony, Durg (C.G.) (Non-applicant No.1)
3. Rajendra Jain, aged about 52 years, S/o late Jethmal Jain, R/o Shanti Sadan, Jain Mandir Road, Durg, Distt. Durg (C.G.) (Non-applicant No.3)
4. Pannalal Jain, aged about 45 years, S/o late Jethmal Jain, resident of in front of Jain Mandir, Tamer Para, Durg, Tah. & Distt. Durg (C.G.) (Non-applicant No.4)

---- Respondents

For Appellant	:	Shri Uttam Pandey, Advocate.
For Respondent No. 1 to 4:	:	None appears

Hon'ble Shri Justice Sanjay Agrawal**Award On Board****16/12/2016**

1. This is an appeal filed by the employer – Mohan Lal Jain under Section 30 (1) of the Workmen Compensation Act, 1923 (now 'The Employee's Compensation Act, 1923') (hereinafter referred to as 'the Act, 1923' in short) against the award dated 18.05.2005 passed by the Commissioner for Workmen Compensation, Labour Court, Durg whereby a total sum of Rs.99,451/- has

been awarded with interest @ 12% per annum from the date of accident till its deposition. While awarding the said compensation, the Commissioner for Workmen Compensation has also imposed the penalty to the tune of Rs.10,000/-, which was required to be paid by non-applicants to the claimant, Smt. Meena Bai.

2. The facts, in short, are that the claimant – Smt. Meena Bai was performing her duty as an employee under the non-applicants in their firm, known as “Panna Sweets” and that while performing her duties as such, has received certain burn injuries to the extent of 45%. Because of the said incident, she has submitted her claim by claiming a total sum of Rs.1,72,383/-, as per the provisions prescribed under the Act, 1923. It is pleaded that she used to earn Rs.60/- per day, monthly Rs.1560/-. This apart, whenever she used to go out as per the order, then she used to receive additional payment of Rs.10/- and thus the claimant has claimed total amount of compensation to the tune of Rs.1,72,383/- under the Act, 1923.

3. The non-applicants have contested the aforesaid claim. The non-applicant – Mohan Lal Jain, the appellant herein, has contested the claim mainly on the ground that the claimant – Smt. Meena Bai is not his employee and he is not the owner of the said firm 'Panna Sweets'. He has contested further on the ground that the claimant has not suffered any permanent disability arising out of and during the course of her employment, and therefore, she is not entitled to any amount of compensation from him.

4. The Commissioner for Workmen Compensation, vide its award impugned dated 18.05.2005, has come to the conclusion that the claimant – Smt. Meena Bai has suffered permanent disability to the extent of 45% arising out of and during the course of her employment and in consequence, total amount of compensation of Rs.99,451/- along with interest @ 12% per annum and penalty

of Rs.10,000/- has been awarded.

5. Being dissatisfied with the aforesaid award, the appellant – Mohan Lal Jain has filed this appeal while exercising the powers enumerated under Section 30 (1) of the Act, 1923. Vide order dated 03.08.2010, this Court has framed the following substantial questions of law :-

“(1) Whether the relationship of employer and employee exists between the claimant and appellant?

(2) Whether in the absence of any medical evidence to prove the nature and extent of injury and the disability suffered by the claimant the respondent was entitled for the award amount?”

6. As far as the first substantial question of law is concerned, for which, it is clear from bare perusal of the record and the evidence adduced in this regard that the injured – Smt. Meena Bai was performing her duties as an employee under the appellant – employer. Even otherwise, the burden was heavily upon the employer to establish this fact that the claimant – Smt. Meena Bai was not his employee, however, he failed to establish the said fact. Therefore, the first substantial question of law is answered in favour of the claimant – Smt. Meena Bai by holding that she is the employee of the appellant – Mohan Lal Jain.

7. As far as the second substantial question of law is concerned, for which, it is apparent from the record that no document to establish the fact that the claimant has suffered permanent disability to the extent of 45% has been produced nor any evidence was adduced in this regard by the claimant. In order to establish the said fact that whether the claimant has suffered permanent disability is entirely upon her. However, neither any document nor even the Doctor has been produced by her to prove the said fact, and therefore, from any angle, it cannot be held that the claimant – Smt. Meena Bai has suffered any disability much less permanent disability, as held by the Commissioner for

Workmen Compensation in its impugned award. In such circumstances, the findings as recorded by the Commissioner for Workmen Compensation that she has suffered 45% disability and that by holding that her earning capacity has been reduced to the extent of 50% are not at all sustainable. Consequently, she is not entitled to the said amount of compensation, as assessed by the Commissioner for Workmen Compensation.

8. Although the claimant is not entitled to any amount of compensation, as observed by the Commissioner, but it is also clear from the record, particularly, the document (discharge ticket) (Ex.P.1) that she suffered some burn injury and for which, she was admitted in the District Hospital, Durg from 19.02.1999 upto 23.02.1999. Therefore, under such circumstances, she is entitled to a lump-sum amount of compensation, which I quantified to the extent of Rs.25,000/-, however, she would not be entitled to any amount towards interest or penalty.

9. In view of the foregoing discussions, the appeal is allowed in part with the above mentioned directions.

10. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge