

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.1014 of 2016**

1. Smt. Sumitra Devi W/o Shri Markandey Verma, Aged About 55 Years Occupation Houser Maker, R/o Mova, Police Station And Post Mova, Tehsil Raipur, Civil And Revenue District Raipur, Chhattisgarh
2. Markandey Verma, S/o Late Vishun Prasad Verma, Aged About 60 Years R/o Mova, Police Station And Post Mova, Tehsil Raipur, Civil And Revenue District Raipur, Chhattisgarh

---- Appellants**Versus**

1. A. C. C. Cement Plant Jamul Bhilai, Tehsil And District Durg, Through Its Managing Direrctor.
2. Shiv Shankar Shukla, S/o Jeevan Lal Shukla, Aged About 42 Years Shiva Engineering, A. C. C. Cement Plant, Jamul Bhilai, Tehsil And District Durg, Chhattisgarh.....(Non Applicants)

---- Respondents

For appellants	: Shri Arjun Lal Singroul, Advocate.
For respondent No.1	: Shri NK Vyas, Advocate
For respondent No.2	: Shri Anjinesh Shukla, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****19.10.2016**

Heard on 01/16, application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal as the instant appeal has been filed after 93 days of its limitation.

2. The application is opposed by the respondents.
3. On due consideration of the reasons mentioned in the application, this Court is of the considered view that the appellants have satisfactorily explained the delay in filing the appeal.
4. Consequently, IA No.01/16 is allowed and the delay in filing the appeal is hereby condoned.

5. With the consent of the parties, the matter is heard finally at the motion stage itself.

6. Facts in brief for disposal of the instant appeal are that the appellants are parents of deceased Chandra Prakash Verma, who was under employment with the respondents. On the instructions of respondent No.2, the deceased was doing some fabrication work inside the premises of respondent No.1. During his employment, on account of accident, he was seriously injured and was taken to Sector-9 hospital, Bhilai and on the very next day i.e. on 22.05.2009, he succumbed the injuries. As the deceased was under the employment of the respondents, his legal heirs filed a case No.32/WC Act/2012/Fatal before the Court. The Court below vide judgment dated 16.02.2016 dismissed the claim filed by the appellants with a finding that the applicants/appellants failed to prove that deceased Chandra Prakash Verma was under the employment of respondents/non applicants and further failed to prove that he died on account of injuries sustained to him in an accident during his employment. The trial Court further held that the applicants also failed to prove that the respondents are liable for the compensation under the Employee's Compensation Act, 1923 (for short 'the Act 1923). Against the said order, the appellants have preferred the instant appeal.

7. Learned counsel for the appellants submits that the court below erred in holding that the appellants failed to prove any of the above issues. He further submits that the Court below erred

in holding that the respondents are not liable to pay any compensation under the Act 1923, hence, the appeal may be allowed and the impugned award passed by the Court below dated 16.02.2016 may be set aside and suitable compensation in favour of the appellants and against the respondents may be passed.

8. Counsel for the respondents have opposed the appeal and submit that as the appellants failed to prove the factum of employment including the death of the deceased within the premises of respondent No.1 and also failed to prove that the deceased was working on the direction of respondent No.2 and also he succumbed to the injuries he sustained during the course of his employment, the award may be affirmed.

9. In order to appreciate the arguments advanced on behalf of the parties, I have perused the award passed by the Court below.

10. A perusal of the award, it appears that the appellants failed to prove the foremost core issue that the deceased was under the employment of the respondents, on 21.5.2009 under the instructions of respondent No.2 he was doing job of fabrication within the premises of respondent No.1, sustained injuries while doing fabrication work and further succumbed to the injuries on account of some accident within the premises. The Court below held that the deceased fell on the road while returning from his job. The Court below further held that the documents (Ex-D/1C to D/24C), which were proved, were not challenged by the

appellants which goes to show that the deceased was not under the employment of respondent No.2 and was not working in the premises of respondent No.1. The Court below further held that in the postmortem report (Ex-D/5), autopsy surgeon noticed no any external injury and in the report cause of death was mentioned as respiratory failure on account of asphyxia. As the reasons for asphyxia was not known, viscera and other articles were preserved and sent for chemical examination, but no any report on the examination of the said viscera was presented by the appellants during the trial, hence the trial Court held that the death of the deceased was not on account of any injury sustained in any accident and as the appellants failed to prove all the three limbs as required, the Court below dismissed the claim by the appellants. During the arguments the appellants failed to demonstrate any facts on the basis of which this Court may take prima facie a different view and admit the matter for consideration.

11. On due consideration, as the appellants failed to prove all the three ingredients which is required for any compensation under the Act 1923, the instant MAC is dismissed at the motion stage itself. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE