

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.1363 of 2016 (O&M)

Date of Decision: March 30, 2016

Kali Ram

...Appellant

Versus

Raj Kali & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. K.C. Bhatia, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the order dated 14.01.2016, passed by the Commissioner, Employees' Compensation Act, Circle Karnal, vide which, the claim application moved by the respondents, who were mother and father of deceased-Karam Singh, claiming compensation on the basis of the death of their son, which took place on 16.04.2004 while working as a mason in the house of the appellant, where he came in contact with the electric wire of high voltage i.e. 11000 voltage, which resulted in shock and he fell down from the second floor of the house suffering burn injuries and physical injuries in the process and died, has been accepted and the compensation as assessed come to `4,84,997/-.

It is contention of the learned counsel for the appellant that the Commissioner has failed to appreciate that there was no employer-

employee relationship between the appellant and the deceased-Karam Singh. He contends that Karam Singh was never engaged by the appellant, rather, one contractor, namely, Jai Chand @ Billu, might have engaged deceased-Karam Singh. However, he could not dispute the fact that the deceased-Karam Singh died while working in the house of the appellant and suffered burn injuries because of electric shock which he suffered on coming into contact with high voltage wire and fall from the second floor. The counsel has further asserted that Karam Singh was under training with the contractor Jai Chand, therefore, he cannot be said to be an employee of the appellant. That apart, he asserts that as per the proceedings initiated under Section 174 Cr.P.C. and statements recorded on the spot, there was no fault of anyone and it was merely an accident which had taken place. He, thus, contends that there being no negligence on the part of the appellant and in fact, it was the negligence of the deceased-Karam Singh himself, therefore, no compensation can be granted to the respondent-claimants. He further asserts that UHBVN has not been impleaded as a party in the claim application and therefore, the same itself is not maintainable because the accident which had taken place, occurred because of the high voltage electricity wire which was running 2 to 3 feet away from the house of the appellant. The impugned order, thus, cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone

through the impugned order but do not find myself in agreement with his submissions.

The factum that the accident has taken place on the second floor of the house of the appellant which was being constructed/plastered and deceased-Karam Singh was working in the said construction process and further, that he was performing the work for which he was engaged, is not disputed although, it is alleged that he was working through Jai Chand alias Billu, who was the contractor, but there being no evidence on record which would indicate any contract between Jai Chand and Kali Ram-appellant, the said plea has been rightly rejected by the Commissioner. The relationship of employer-employee, thus, keeping in view the specific provisions of the statute, is duly established.

As regards the contention of the learned counsel for the appellant that as per the proceedings initiated under Section 174 Cr. P.C., this fact is admitted that it was not the fault of the appellant or any other person and it was merely an accident, would not make any difference as the statutory provisions do not provide for any exception to the same, rather, it states otherwise according to which, this aspect is not to be looked into. The Tribunal has, therefore, properly appreciated this plea as well.

As regard the contention of the counsel for the appellant that UHBVN is not a party to the claim application and therefore, the same was not maintainable against the appellant, again deserves

rejection in the light of the fact that under the facts and circumstances of the case and as per the evidence, the house of the appellant was merely 2 to 3 feet away from the high voltage electricity wire and no evidence has been brought on record which would indicate that he had ever moved any application for shifting of the high voltage electricity wire from the place where it was running. In any case, as per Section 13 of the Employees' Compensation Act, 1923, any stranger who is liable to pay damages may be asked to indemnify the employer and there was no reason as to why the appellant could not implead the UHBVN as a party to the claim application, if he was interested in pressing the said aspect. Due consideration in this regard has been given by Commissioner, which again cannot be faulted with.

At this stage, counsel for the appellant states that he may be granted permission to take recourse for claiming compensation against UHBVN. Suffice it to say that such a permission cannot be granted at this stage, however, he may avail of remedy, if any, in accordance with law against the said party.

The appeal being devoid of any merit stands dismissed.

In the light of the dismissal of the appeal, the application for stay i.e. CM No.4680-CII of 2016, stands disposed of.

March 30, 2016
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

