

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 740 of 2010

1. Superintending Engineer (City), C.G. State Electricity Board, Ambikapur, Chhattisgarh.
2. R.K. Sahu, S/o. Shri Heera Ram Sahu, Aged about 45 years, Occupation Service (Junior Engineer), C.G. State Electricity Board, Ambikapur, Chhattisgarh

---- Appellants

Versus

1. Parsan Ram Rajwade, S/o. Kulwant Ram Rajwade, Aged about 24 years, Occupation Labourer, R/o. Amalbhatti, Police Station Darima, Tahsil Ambikapur, District Surguja Chhattisgarh
2. P.M. Oman, Aged about 64 years, Occupation Contractor, R/o. In front of Manipur School, Ambikapur, District Surguja, Chhattisgarh

----Respondents

For Appellants	:	Mr. Sunil Otwani, Advocate along with Mr. Sushil Sahu, Advocate
For Respondent No.1	:	Mr. Rishi Mahobia, Advocates
For Respondent No.2	:	Mr. Roshan Verma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/11/2017

1. Present is an appeal under Section 30 of the Workmen's Compensation Act. The challenge is to the award dated 26.02.2010, passed by the Commissioner for Workmen's Compensation, Labour Court, Ambikapur, Chhattisgarh, in Case No. 3/W.C.Act/2005/(Non-Fatal).
2. Vide the impugned award the Commissioner in an injury case has awarded a compensation of Rs.82,582/- with 10% interest from the date of accident and also 20% of the awarded amount towards penalty.
3. The challenge to the impugned award is on the ground that the injured-Claimant in the instant case was an employee of the

contractor and therefore any liability which would accrue would first accrue upon the contractor and not upon the present appellants. It was further contended by the appellants that the accident did not occur because of any lapse or fault on the part of the officers of the appellants, but it was the Claimant himself, who was responsible for the accident and he did not take proper caution and care by working, which resulted in the accident.

4. It was also contended that the Commissioner has assessed the disability of 30% which is an erroneous finding and therefore the compensation deserves to be suitably reduced. Lastly it was contended that finding of the Tribunal imposing penalty upon the principal employer i.e. the present appellants is contrary to the Section 4 of the Workmen's Compensation Act, where the penalty part could only be against the immediate employer, which in the instant case would be the respondent no.2, which the learned Commissioner has rightly awarded in paragraph No.13 of the award, but has directed the present appellants to deposit the entire amount.
5. Having heard the rival contentions put forth on either side and on perusal of record, undisputedly the accident took place in the course of employment and it also arose out of the employment. The evidence which have come on record does not in any manner show that the accident occurred because of any lapse or willful act on the part of the injured in the instant case. The employment, the salary and other aspects is also are not in dispute. The only dispute is to the quantum of compensation awarded and that the injured being in employment of the respondent No.2 and not that of the present appellants.

6. The issue of employment cannot be a ground for challenge by the present appellants on the ground that the admitted fact from the record is that the present appellants themselves in their written statement have accepted the fact that the injured was working under the respondent No.2-Contractor and that the present appellant had awarded a contract to the respondent No.2. Thus, the present appellant being the principal employer stands established and thus they cannot escape the liability of payment of compensation under the provisions of the Workmen's Compensation Act.
7. As regards the disability part, true it is that the Doctor who has issued Ex.P/3 has shown the permanent disability at 10%. However, the injured in the instant case was examined before the Court below and admittedly it was a non-schedule injury, the nature of injuries was that of the Claimants sustaining burn injuries all over his body as a result of the accident and taking into considering the gravity of the burn injuries, which the Commissioner has personally seen during the examination of Claimants, he has assessed the loss of earning capacity or disability of the Claimant at 30%. This being a finding of fact on the personal and subjective satisfaction of the Commissioner, it would be a finding of fact, which perhaps would not be a ground for challenge under Section 30 of the Workmen's Compensation Act, where the challenge can be only on substantial question of law.
8. However, this Court finds sufficient force on the argument of Mr. Otwani to the extent that the present appellants being principal employers cannot be directed to deposit the penalty part, which the Commissioner though has rightly fastened upon the Contractor, but

had directed the deposit to be made by the present appellants. This finding of the Commissioner is ***per se*** illegal as it is in direct contravention to the provisions of Section 4A of the Workmen's Compensation Act.

9. However, perusal of record would show that the appellants in the instant case have very fairly deposited the entire amount before the Commissioner, this Court instead of setting aside of the order modifies it to the extent that the appellant shall be at liberty to recover the amount awarded towards penalty from the Contractor by initiating appropriate recovery proceedings. As regards, the amount deposited by the present appellants before the Commissioner, the same can be disbursed to the respondent No.1 (injured/Claimant).
10. The appeal of the appellants, thus stands allowed in part to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge

Ved