

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1165 of 2017

1. Manager (Personnel) N. M. D. C. Limited Bailadila Iron Ore Project, Deposit No. 14 And 11 C, Kirandul, District Dantewada (Chhattisgarh)
2. General Manager (Fanance), N. M. D. C. Limited, Bailadila Iron Ore Project, Deposit No. 14 And 11 C, Kirandul, District Dantewada (Chhattisgarh)
3. Executive Director/ General Manager, N. M. D. C. Limited, Bailadila Iron Ore Project, Deposit No. 14 And 11 C, Kirandul, District Dantewada (Chhattisgarh)

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Versus

1. Shrimati Vimla Durga W/o Lalita Ram Durga, Aged About 48 Years R/o Dharampura Camp, Kirandul, District Dantewada (Chhattisgarh)
2. G. S. Kumar S/o Shri R. G. Pillai, R/o Bacheli, Andheri Chowk, Ward No. 01, Post Bacheli, District Dantewada (Chhattisgarh)
3. Raman Kumar Sinha S/o Shri Janardhan Prasad Sinha, R/o C S E B Road, Millennium Colony, Bacheli, District Dantewada (Chhattisgarh)

---Respondents

For Appellants	:	Mr. Vaibhav Shukla, Advocate along with Mr. Chandradeep Prasad, Advocate
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Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/08/2017

1. Present is an appeal under section 30 of the Employees Compensation Act. The challenge in the present appeal is to the award dated 24/08/2016 passed by the Commissioner Employees Compensation, Jagdalpur in claim case No.13/2012/W.C.Act/Non-Fatal.
2. Vide the said impugned award the Tribunal has allowed the claim application moved by the Respondent No.1-claimant and ordered for payment of Rs.2,06,860/- along with interest @ 12% per annum. It is this award which is under challenge by the appellant herein.
3. The sole contentions of the appellant is that, the accident arose while the claimant was under the employment of the Respondent No.2 & 3 who were the contractors engaged by the present

appellant. The contentions of the counsel for the appellant is that, the present appellant had issued contract to the Respondent No.1 & 2 for laying of pipeline. In the process of execution of the said contract, Respondent No.2 & 3 had engaged claimant-Respondent No.1 as their worker and who in the course of digging met with an accident and due to which she suffer fracture on the pelvic-girdle.

4. According to the doctor, the claimant had suffered disability of 60%. The claimant filed a claim application for amount of compensation under the provision of the Employees Compensation Act which stood allowed by the impugned award. While passing the award labour court i.e. the Commissioner for workmen compensation has fastened the liability of payment of compensation upon the present appellant who were the principle employer in the instant case. It is this fastening of the liability which is under challenge in the present appeal.
5. According to the counsel for the appellant since the claimant was not an employee of the present appellant, they could not been fastened with the liability of payment of compensation. He further submits that contractor i.e. Respondent No.2 & 3 have subsequent to the conclusion of the work have already left and that there was no security amount left with present appellant for recovering from the said contractor. It was further contended by the appellant that it is a case where the Respondent No.2 & 3 have deliberately not appeared before the court below and remained ex-parte and thus liability of payment of compensation should have first fastened upon the Respondent No.2 & 3 i.e. the immediate employer thereafter should have been fallen upon the present appellant i.e. the principle employer.
6. Having heard the contentions on either side and on perusal of records what is undisputed is the granting of contract by the present appellant to the Respondent No.2 & 3. What is also not in dispute is the engagement of the claimant by the Respondent No. 2 & 3.
7. Likewise what is also admitted position is the accident that arose in the course of the employment of the Respondent No.1 with the

Respondent No.2 & 3 and claimant suffering from fracture on the Pelvic-Girdle.

8. Undisputedly, present appellant is the principle employer as the claimant was working as a contractor employee and the contractor i.e. Respondent No.2 & 3 being the immediate employer. It is settled position of law that in the event if there is any claim of a contractor employee, liability would first fall upon the immediate employer. But in the event if immediate employer does not fulfill the requirement of law then it shall be the duty casted upon the principle employer to redress the grievance and thereafter take appropriate remedial measures for recovering the same from the contractor.
9. In the instant case also what clearly reflects from the proceeding is that, the immediate employer i.e. the contractor-Respondent No.2 & 3 had remain ex-parte inspite of proper service of notice and it was the present appellant who had contested the case before the court below on the said factual matrix of the case.
10. So far as the employment, accident, resultant injury and the disability sustained by the claimant being all an admitted factual aspect, this court does not find any illegality committed by the court below in fastening liability upon the present appellant being the principle employer and thus the impugned award does not warrant any interference and the same deserves to be and is accordingly rejected.
11. However we make it clear that since admittedly the claimant was employee under the contractor and role of the present appellant is that of a principle employer for payment of the amount of compensation awarded and which is paid by the present appellant can be recovered from the contractor by initiating appropriate proceeding under the law to make good the loss of payment of compensation as awarded in the impugned award. The appeal thus fails and is accordingly rejected with the aforesaid observation.

Sd/-
(P. Sam Koshy)
Judge