

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 1075 of 2009**

Shri Krishna Company, Marge-2 C-Jone-1, New Adarsh Nagar, Distt. Durg (Owner of the Vehicle Borewell No.CG-07-D-2099).

---- Appellant**Versus**

1. Bharti Mandavi @ Bharti Kumari aged about 19 years, D/o late Shri Shankarlal Mandavi R/o Village & Post Naragaon, Thana & Tehsil Gurur, Distt. Durg (CG).
2. Salikram Yadav S/o Not Known, aged about 45 years, Director, Krishna Borwells Kamthi, Line Rajnandgaon (CG).
3. State of Chhattisgarh Through The Secretary, Public Health Engineering Department, Mantralaya, Raipur (CG) (Principal employer of the deceased Madhusudan Mandavi).
4. Superintendent Engineer Public Health Engineering Department, Mahasamund, Distt.-Mahasamund (CG) (Sub Principal Employer of the deceased).
4. Smt. Aasin Bai Netam W/o Bhagirathi Netam, R/o Barkachhar, P.S. Charama, Tahsil Charama, Distt.-Kanker (CG).
5. The New India Insurance Company Ltd. Branch Office Kamthi Line, Rajnandgaon (CG), Through Divisional Office Thakkar Chamber G.E. Road, Power House, Bhilai, Tahsil and Distt.-Durg (CG).

---- Respondents

For Appellant	:	Shri Jitendra Gupta, Advocate.
For respondents No.1&5:		Shri CK Sahu, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/09/2017**

1. The present is an appeal under Section 30 of the Employee's Compensation Act, 1923 (in short, the Act) against the award dated 04.06.2009 passed by the Commissioner, Employee's Compensation Act, Labour Court, Durg, in Claim Case No.6/Category-I/B/2007/ WC Act/Fatal.
2. The appeal is heard on the substantial questions of law as to whether the death of the deceased Madhusudan Mandavi @ Madhu arose because of the accident which arose out of and during the course of his

employment. Secondly, whether the claimant would fall within the definition of dependent under the definition of the Act as defined under Section 2-D of the Act for the maintainability of the claim case.

3. In the instant case, the Commissioner vide impugned award has awarded compensation of Rs.2,84,011/- payable to the claimants i.e. respondent No.1 and have also imposed penalty of 50 percent of the said amount i.e. Rs.1,42,005/-against the present appellant.
4. According to counsel for the appellant-employer, it is a case where the appellant had entrusted the work of installation of borewell to one Krishna Borewell. The deceased was engaged by the appellant for digging borewell in the contract received from the State Govt. i.e. Public Health Engineering Department. In the course of execution of contract, the deceased Madhusudan died of snake bite. The claimant namely Ku. Bharti Mandavi had filed a claim application seeking for compensation under the provisions of the Act which has been allowed. While allowing the claim application, the Commissioner has also awarded penalty of 50 percent of the award amount.
5. Counsel for the appellant submits that firstly the claim application was not maintainable for the reason that the accident does not fall within the provision of Section 3 of the Act. It was further contended that the claimant also would not come in the categories of dependent as defined under Section 2-D of the Act. Thus, for the aforesaid two reasons, the impugned award deserves to be set aside. The award is also assailed to the extent of penalty being imposed upon the appellant and that before imposition of penalty it was the requirement of law that the Commissioner ought to have issued show cause notice as is required

under Section 4-A of the Act which has not been done in the present case.

6. A perusal of record would show that Section 2-D of the Act clearly defines different categories of dependent who could file the claim application. The claimant in the instant case, in her deposition has categorically admitted the fact that she got married after Madhusudan had died that means on the date of filing of claim application she was dependent upon the deceased. Thus, the objection so raised by the appellant is of no merit and the same stands negated.
7. So far as second ground is concerned, if we look into the nature of cause of death, it clearly reflects that the death was because of the snake bite. For the purpose of attracting the provisions of the Act, it requires that the accident should fall within the ambit of Section 3 of the Act which says that accident should arise in the course of and also arising out of employment. If we look into the nature of employment, it was for carrying out a digging work of borewell which was the substantive nature of work which the deceased was supposed to carry out. Snake bite is an external factor which had caused death of deceased Madhusudan. It had no causal connection between the nature of employment and the cause of death. From the evidence which have come on record, it clearly reflects that it is a case where the death arose because of snake bite which cannot be in any manner attributed to the nature of his employment. However, considering the fact that cause of death may not be directly attributed to the nature of employment, but the fact which remains is that the contract which was provided for was digging of borewell and if the same is an area where there were snakes

available, it should have been ensured by the employer to see that the said place is clear for the workers to work. If the area was not properly cleaned or was not clear of such snakes which were otherwise there, it cannot be said that the accident did not arise out of employment. The finding the Commissioner thus cannot be faulted with.

8. However, so far as imposition of penalty is concerned, this court is of the opinion that requirement of law under Section 4-A of the Act is that before imposition of order of penalty, the Commissioner ought to have issued a show cause notice to the employer. In the instant case, the record does not show any such notice having been issued before imposition of penalty. Thus, the impugned award to the extent of imposition of penalty on the appellant is not sustainable. The same deserves to be and is hereby set aside. However, the order of payment of compensation stands affirmed.
9. The appeal of the owner thus stands partly allowed.

Sd/-

(P. Sam Koshy)
Judge

inder