

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 52 of 2009**

M/s. Mishra Minerals, Through: Prop. T.R. Mishra, S/o. Shri Janki Prasad Mishra, Prop. M/s. Mishra Minerals, 48/5 Motilal Nehru Nagar, East Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Appellant**Versus**

1. Vasudev Sahu, Aged about 62 years, S/o. Shri Pururam Sahu.
2. Ramesh Kumar Sahu, Aged 15 years,
3. Ku. Anita Sahu, Aged 13 years,
4. Ku. Okanswari Sahu, Aged 11 years,
5. Ku. Pushpa Sahu, Aged 9 years,

Respondents No. 2 to 5 Minors, No.2 Son and 3 to 5 Daughters of Shri Tirath Ram Sahu, Represented through: Shri Vasudeo Sahu, All R/o. Gram Kharora, Tahsil Berla, District Durg, Chhattisgarh

6. Premlal, Aged 25 years, S/o. Shri Aamia Nishad, R/o. Gram Kesdabari, Tahsil Saja, District Durg, Chhattisgarh
7. Arvind Kumar Mishra, Aged 38 years, S/o. Shri Narayan Prasad, R/o. Kodawa, Thana Saja, Tahsil Saja, District Durg, Chhattisgarh

----Respondents

For Appellant	:	Mr. Anurag Dayal Shrivastava, Advocate
For Respondents No. 1 to 5	:	Mr. C.K. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****10/10/2017**

1. None for the Respondents No. 6 & 7 though served.
2. Present is an appeal under Section 30 of the Workmen's Compensation Act assailing the award dated 20.11.2008, passed by the Commissioner, Workmen's Compensation, Labour Court, Durg, Chhattisgarh, in Case No. 48/W.C. Act/Fatal/2004.
3. Vide the impugned award, the Tribunal has awarded a compensation of Rs.1,28,089/- and penalty of Rs.64,045/- i.e. 50% of the compensation awarded. It was also ordered that in the event if the

awarded amount is not deposited within a period of 30 days, the same shall carry interest @ 9% per annum.

4. The appeal was admitted for hearing on 17.08.2012 by framing following substantial questions of law:-

“(1) Whether the employer and employee relationship existed between the deceased and the appellant?”

(2) Whether the learned Commissioner is justified in holding that the death of Smt. Kumari Bai, by accident, arose out of and in the course of employment with appellant?”

(3) Whether the learned Commissioner is justified in imposing the penalty under Section 4-A(3) (b) of the Act, 1923”

5. The brief fact of the case is that the deceased Kumari Bai, aged about 35 years, met with an accident, when she was working in a crusher plant on 30.04.2003, when the bunker in which the crusher stone was stocked broke and the deceased came under the stones and got crushed.
6. A claim application was filed, which vide the impugned award stands decided in favour of the claimants. It is this award, which has been challenged by the present appellant. The contention of the counsel for the appellant assailing the impugned award is that there is no employer-employee relationship in the instant case and that the Tribunal has wrongly fastened the liability upon the present appellant. According to the appellant they had specifically pleaded before the Court below that the deceased was not an employee under them and that she was working elsewhere and that the accident occurred when she had come to the place of the present appellant for having lunch with one of her mate i.e. Smt. Baby, when the accident occurred. That since there is no proof of employer-

employee relationship, the liability could not have been fastened upon the present appellant.

7. It was also contended by the appellant that the penalty which has been imposed upon by the Tribunal is erroneous for the reason that since there was a dispute of employer-employee relationship and the Tribunal should not have award penalty in favour of the claimants.
8. The counsel appearing for the claimants however opposing the appeal submits that all the contentions raised by the counsel for the appellant all are findings of fact and that since there is no substantial questions of law, the appeal being devoid of merit deserves to be rejected.
9. Having heard the contentions put forth on either side and on perusal of record what is evidently clear is that the claimants in their support have adduced the evidence of AW/1-the father-in-law of deceased, who has stated the factual aspects so far as the accident is concerned. Further what is also relevant is the evidence of AW/2-Smt. Baby, a person who was working along with deceased at the time of accident. The deposition of AW/2 clearly reflects that both AW/2 as well as the deceased was working together and both of them came underneath the crusher stone as a result of the accident and she had also received injuries, but it was the deceased, who received grievous injuries to which she later succumbed. The present appellant does not dispute to the fact of AW/2-Smt. Baby being their employee.
10. This being so, the evidence of Smt. Baby cannot be ignored and nor is their any substantive cross-examination made with which the

deposition of Smt. Baby is to be disbelieved or gives rise to doubt. Moreover, she has herself stated that she was working along with the deceased, when the accident occurred. This by itself means that the deceased was also working along with AW/2-Smt. Baby for the same employer and which would be the present appellant. Therefore, the safest inference, which could be drawn in the given factual background is to reach to the conclusion of the deceased working under the present appellant at the time of accident, so far as the accident to have arisen is not in dispute.

11. Further, the accident arising from the damage caused to the bunker is also not in dispute and in the given facts when there is sufficient evidence by the claimants' side to show that the accident arose in the course of employment and arising out of employment is well established. For the aforesaid factual matrix of the case, this Court does not find any strong case made out for interfering with the impugned award. So far as the penalty part is concerned, also this Court is of the opinion that since the date of accident was 30.04.2003 and the award has been passed and the claimants to get an award in their favour only after contesting the case for long in the month of October, 2008 i.e. almost after five years it cannot be said that the imposition of penalty is either harsh or bad in law. Thus, the said ground of the appellant also stands negated. The appeal thus fails and is accordingly dismissed. The substantial questions of law framed by this Court stands answered in the negative holding that the employer-employee relationship has been fully established so also the finding of the Tribunal of the accident having arising out of and in the course of employment. The Court below is also justified in

imposing penalty under Section 4-A (3) (b) of the Workmen's Compensation Act, 1923.

12. The appeal thus stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved