

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 177 of 2009**

Rajendra Tamboli S/o Chintaram Tamboli, R/o R. K. Industries behind
Kankalipara, near Kankali Talab Raipur, Tahsil Raipur, District Raipur (CG)

---- Appellant**Versus**

1. Smt. Kanan Sardar, aged about 40 years, W/o Tejan Sardar
2. Tejan Sardar, aged about 45 years, S/o Gaurchand Sardar

Both resident of Mana Camp, 18 Block, 18/17, Post Mana, Tehsil & District
Raipur (CG)

---- Respondents

For Appellant	:	Shri Sanjay Patel, Advocate
For Respondents	:	Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/10/2017**

Present is an appeal under Section 30 of the Workmen's Compensation Act assailing the award dated 12.12.2008 passed by the Commissioner for Workmen's Compensation cum Labour Court, Raipur, (CG) in Case No. 1/B-24/W.C.Act/2004(fatal). Vide the impugned award the learned Commissioner has in a death case awarded compensation of Rs.1,66,027/- with penal interest in the event of default of payment of compensation within a period of 45 days.

2. Facts of the case in brief are that the deceased Vishwajit Sardar met with an accidental death while working as a painter at the residential house of the appellant herein. The present appeal was admitted on 28.09.2012 whereby this Court had framed the following questions of law:

- i) Whether the finding of the Commissioner is perverse and inconsistent with the material evidence?

ii) Whether the finding of the Commissioner in respect of liability of appellant is justified particularly when there is no employer-employee relationship between the deceased and appellant?

iii) Whether the Commissioner is justified in awarding the claim particularly when the deceased does not come within the definition of the Workmen's Compensation Act, 1923?

3. Considering the questions of law framed by this Court when we look into the facts of the present case what reveals is that the present appellant had engaged Vishwajit Sardar, Sujit, Trinath and Brojan Sardar for whitewashing his residential house. Deceased Vishwajit was sitting on a swing carrying on the painting work when the swing slipped and fell down along with the deceased resulting in grievous injuries to which he succumbed on the next day. The claimants before the Labour Court were the parents of the deceased who in addition to themselves had also examined AW-2 Brojan Sardar and AW-3 Habil Nand Head Constable from Police Station Purani Basti, Raipur.

4. A perusal of the reply filed by the appellant before the Labour Court itself shows that there was a total denial of the employer and employee relationship and also the claim of the claimants. However, in return which has been filed by the appellant, there was no pleading taken by him so far as the dispute pertaining to the employer and employee is concerned. Further it has also not been pleaded by the appellant as to the fact that the work of whitewashing of his house was given on contract to one Shri Kishore Biswas who has also not been examined in this regard.

5. A perusal of the record would show that the claimants in addition to their statement have also brought the evidence of AW-2 Brojan Sardar a person who was working along with the deceased which proves the employment as well as the accident and the subsequent death of the deceased Vishwajit. Likewise, the Head Constable AW-3 has also been examined before the Court below who has proved the accident by referring to the intimation given to the Police

Authorities in respect of the accident which further strengthens the case of the claimants.

6. In the light of the evidences which have come on record, this Court does not find any strong case made out by the appellant calling for interference with the impugned award. Thus, the question of law framed by this Court vide its order dated 28.09.2012 stands decided in the negative holding that the finding of the Commissioner is neither perverse nor inconsistent with the evidences which have come on record. Rather the place of employment has been sufficiently proved, the accident and the accidental death of the deceased has also been proved and the employer and employee relationship also stands established. Accordingly, the award passed by the commissioner is held to be proper, legal and justified.

7. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE