

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 933 of 2009**

Ashok Kumar S/o Arjun Singh Chandrakar, R/o Vill.-Kolihapuri, Tah. & Distt.-Durg (CG). Present address : Arun Dresses, Station Road, Distt.-Durg (CG)

---- Appellant**Versus**

1. Lagni Bai widow of Lachhan Lal,
2. Rajulal S/o Lachhan Lal, aged about 12 years
3. Ku. Ganga Bai D/o late Lachhan Lal, aged about 10 years.
4. Ku. Jamuna Bai D/o late Lachhan Lal, aged about 8 years.
5. Khemgir, S/o late Lachhan Lal, aged about 2 years.
Minors (Respondents No.2 to 5) through mother Lagni Bai
All R/o Nayapara, Durg Ward No.1, Durg, Tah. And Distt. Durg (CG).
6. Guharam Chandrakar S/o not known, R/o village Kolihapuri, Teh. And Distt. Durg (CG).

---- Respondents

For Appellant	:	Shri Raj Awasthi, Advocate.
For respondents 1 to 5	:	Shri MPS Bhatia, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****26/09/2017**

1. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923 (in short, the Act) against the award dated 12.05.2009 passed by the Commissioner for Workmen's Compensation, Labour Court, Durg, in case No. 51/93/WC Act/Fatal. Vide the impugned award the Tribunal has awarded compensation of Rs.81,977/- to the claimants. In addition, the Commissioner has also imposed penalty of Rs.40,989/-.
2. Considering the fact that this appeal is of the year, 2009 and no one appears to represent the appellant, this court thought it fit for taking assistance of Shri Raj Awasthi, Advocate, for disposal of the appeal.
3. Learned counsel for the appellant submits that it is a case where the deceased Lachhan Lal met with an accident on 29.12.1991 in the course of construction of residential house of the present appellant. The

accident occurred when Lachhan Lal along with other workers were affixing the centering for the casting of slab of the first floor of the house of the appellant. In the course of affixing centring, he came in contact with live electricity wire which was passing through that area resulting in his death on 11.01.1992.

4. The undisputed facts in the instant case is that the deceased Lachhan Lal and other workers were engaged by the contractor Jivrakhan under whose supervision the centring work was being executed.
5. According to counsel for the appellant, it is a case where admittedly the immediate employer of the deceased was Jivrakhan and not the present appellant. It was also contended by the appellant that the construction work which was undertaken was a residential house and it was not directly related to the trade or business of the appellant and in that case also the provisions of the Act would not be applicable. It is further submitted that there is no evidence as to at what height the deceased was working at the time of accident so as to bring the accident within the purview of the Act. What also has been argued is the fact that the Commissioner has wrongly imposed the penalty against the appellant whereas the penalty, if any, would be against the immediate employer i.e. Jivrakhan. Thus, prayed for setting aside the award impugned.
6. Counsel for the claimants opposing the appeal submits that it is a case where the award is based on the evidence which have come on record and the appeal would only be maintainable if there is any substantial question of law. According to him, whatever the contention of the appellant, are pure finding of facts which have been dealt with by the Commissioner. Therefore, there is no scope of interference and the appeal deserves to be rejected.
7. Having considered the contentions put forth on either side and on

perusal of records, some of the undisputed facts are (i) that, the accident did take place on 29.12.1991 as a result of which Lachhan Lal died on 11.01.1992 (ii) deceased was engaged by the contractor Jivrakhan (iii) the spot of accident was the under construction residential house of the appellant and lastly there was no direct relationship of employer and employee between the present appellant and the deceased person.

8. In view of the aforesaid admitted factual matrix of the case, what is now relevant to be seen is the place of incident which admittedly is the residential house of present appellant. The said house was not in any manner connected with the trade or business of the appellant as is required under the Act. There is no direct evidence as to at what height the deceased was working at the time of accident. Since he came in contact with high tension live wire, it can be easily presumed that the place where he was working was more than 12 feet height which would squarely bring the claim case under the provisions of the Act.
9. Given the above facts and circumstances of the case, Jivrakhan being the immediate employer, it has to be presumed that the present appellant whose house was being constructed by Jivrakhan, was engaged indirectly for the present appellant. Therefore, this court has no hesitation that the present appellant would squarely fall within the definition of employer under the provisions of the Act. Thus, the findings of the Labour Court inasmuch as holding the appellant liable for payment of compensation does not warrant any interference.
10. However, so far as imposition of penalty is concerned, this court is of the opinion that penalty part ought to have been first saddled upon Jivrakhan who was the immediate employer and who ought to have held responsible for not depositing the compensation within 30 days from the date it fell due as is required under Section 4-A of the Act. Further, what

is also reflected from the proceeding is that even before imposition of penalty, it was mandatorily required under the law to first issue notice to the employer which again in the instant case does not appear to have been followed or fulfilled. Further, what also is reflected is that the principal employer would be responsible only for payment of compensation and that the penalty part would first have to be fastened upon the immediate employer which in the instant case is Jivrakhan.

11. In the given facts and circumstances of the case, this court is of the opinion that imposition of penalty against the present appellant is not proper, legal and justified. The same deserves to be and is hereby set aside.
12. In the result, the appeal is allowed in part inasmuch as the appellant shall be liable to pay only the principal amount of award. That, the award so far as penalty is concerned, the same stands quashed. Since the entire amount inclusive of penalty has been deposited, the appellant shall be entitled for refund of the penalty part. The principal amount shall be disbursed to the claimants.
13. Registry is directed to send a copy of this order to the appellant on the given address at the earliest.
14. Before parting with the matter, this court appreciates the valuable assistance rendered by Shri Raj Awasthi, Advocate.

Sd/-
(P.Sam Koshy)
Judge