

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1287 OF 2009

1. Bajrang Agrawal, S/o Radhyshyam Agrawal, (Thekedar), R/o Girls College, beside Durga Lodge, Raigarh, Tahsil & District Raigarh (C.G.)
2. President, Hariyana Bhawan (Marwadi Dharmshala), Sanjay Complex, Raigarh (C.G.), through- Mahendra Moda, R/o Kotra Road, Raigarh (C.G.)

... Appellants

versus

1. Kumari Bai, W/o Late Kheer Singh Sidar, aged about 30 years
2. Minor Ku. Dayamati, D/o Late Kheer Singh, aged about 10 years
3. Minor Ku. Asmati, D/o Late Kheer Singh, aged about 8 years
4. Minor Ku. Asha, D/o Late Kheer Singh, aged about 6 years
5. Minor Ku. Sadmati, D/o Late Kheer Singh, aged about 5 years
6. Minor Premshanker, S/o Late Kheer Singh, aged about 3 years
7. Minor Hemsagar, S/o Late Kheer Singh, aged about 1½ years
No. 2 to 7 through natural guardian mother Kumari Bai, W/o Late Kheer Singh Sidar.
All R/o Village Gopalpur, P.S. Chakradhar Nagar, Raigarh, Tahsil & District Raigarh (C.G.)
8. Secretary, Omprakash Beriwal, Advocate, R/o Danipara, Raigarh (C.G.)

... Respondents

For Appellant	:	Mr. Akhand Pratap, Advocate, under instructions of Mr. Sanjay Agrawal, Advocate.
For Respondents 1 to 7	:	Mr. Lav Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/10/2017

1. The present is an appeal under Section 30 of the Workmen's Compensation Act, assailing the award dated 1.6.2009 passed by the Commissioner, Workmen's Compensation Act-cum-Labour Court, Raigarh, in Case No. 20/W.C.Act/2006(Fatal).
2. Vide the impugned award, the learned Commissioner, in a proceeding under Section 22 of the Workmen's Compensation Act, in a death case, has awarded a compensation of Rs.2,49,782/- to respondents no. 1 to 7/claimants.
3. This Court while admitting the present appeal on 21.4.2010 has framed the following substantial of law:

“Whether the Commissioner for Workmen's Compensation was justified in holding relationship of employer and employee between the appellant and the deceased Kheer Singh?”

4. The appellants have filed the present appeal questioning the liability which has been fastened upon them. The ground of challenge is that the deceased-Kheer Singh Sidar was never an employee of the appellants and that he was never engaged by them in any of the work which was executed by them. According to the learned counsel for the appellants, there is no relationship of employer-employee established between the appellants and the deceased so as to attract the provisions of the Workmen's Compensation Act. It was further contended that there were material contradictions in the statement of the witnesses examined on behalf of the claimants, whereas there is sufficient evidence which has been led by the appellants before the Commissioner to show that firstly there was no relationship and secondly no accident did occur at the site in which the appellants were having the work. It was also the contention of the appellants that there was also a huge delay on the part of the claimants in raising the claim application, which also creates a doubt so far as the claim of the claimants is concerned.

5. On the other side, learned counsel appearing for respondents-claimants opposing the appeal submits that all the contentions put forth by the appellants are all finding of facts and this Court in an appeal under Section 30 of the Workmen's Compensation Act would not go into the finding of facts but would only consider the substantial question of law as is required under Section 30 of the said Act. He further submits that the witnesses examined before the Commissioner have clearly established the case of the claimants and thus the present appeal deserves to be rejected.

6. Having heard the rival contentions put forth on either side and on perusal of the record, what is relevant at this juncture to consider is that the deceased met with an accidental death on 31.3.2004 when he was working as a contractor employee at Marwadi Dharmshala in Raigarh. An FIR in this regard was also immediately lodged wherein also it was reflected that the accident occurred at Marwadi Dharmshala of which the third floor was being constructed when the accident occurred. Further, from the reply of respondent no.1 also it clearly reflects that the deceased was working at the construction site at Marwadi Dharmshala in Raigarh. Further, the appellant in his evidence has admitted the fact that he had received the contract for the construction of the third floor of the building. When all these facts of the case are connected together the safest of the inference that could be drawn is that the deceased was working as a construction worker for the appellant-contractor in the building of the third floor of Marwadi Dharmshala at Raigarh. Further, from the evidence of the appellants themselves it reflects that Marwadi Dharmshala and Haryana Bhawan are one and the same building and that the location of the said building was also same i.e. near the station road at Raigarh.

7. All these facts put together would clearly show that the link is complete to establish that the deceased was working as a contractor employee for the construction of the third floor of Marwadi Dharamshala of which the present appellant was the contractor.

8. This Court thus is of the opinion that the finding of the learned Commissioner is based on the proper appreciation of evidence and is thus proper, legal and justified. The substantial question of law framed by this Court is answered in the negative holding that the Commissioner for Workmen's Compensation Act has not in any manner committed an error of law or judgment in deciding the claim case in favour of the claimants

and passing the award against the present appellants. The employment of the deceased at the construction site for the contract given to the present appellant stands fully established.

9. Section 30 of the Workmen's Compensation Act clearly envisages that an appeal to the High Court would be maintainable only in the event of there being a substantial question of law. The contentions raised by the counsel for the appellants in support of their claim clearly reflect it to be a finding of fact and for this reason also the appeal deserves to be dismissed.

10. As a result, the appeal being devoid of merits the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge