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HIGH COURT OF CHHATTISGARH AT BILASPUR

MAC No. 1622 of 2009

The Oriental Insurance Company Limited, Through Divisional Manager,
Divisional Office, Malviya Nagar, Durg, District Durg (Chhattisgarh).

---- Appellant

Versus

1. Chaitram Patel S/o Palturam Patel, aged about 48 years.
2. Smt.Lilabai W/o Chaitram Patel, aged about 45 years.
Both are resident of Village Jhalmala, P.O.Jhalmala, Teh.Balod, District Durg (Chhattisgarh).
3. Arun Sharma, R/o Village & PO Dhaneli, Thana Dharsinwa, District Raipur (Chhattisgarh).
4. M/s. Sundar Electrical, Pro. Through Raghuvver Prasad Sinha S/o Mahto, Occupation Electric Contractor, R/o M.I.G.-611, Hudco Bhilai, Teh. & District Durg (Chhattisgarh).
5. C.G.State Electric Board, Through Junior Engineer, Dharsinwa, District Raipur (Chhattisgarh).

---Respondents

AND

MAC No. 1431 of 2009

M/s. Sundar Electrical, Pro. Through Raghuvver Prasad Sinha S/o Mahto, Occupation Electric Contractor, R/o M.I.G.-611, Hudco Bhilai, Teh. & District Durg (Chhattisgarh).

---- Appellant

Versus

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4. C.G.State Electric Board, Through Junior Engineer, Dharsinwa, District Raipur (Chhattisgarh).
5. The Oriental Insurance Company Limited, Through Divisional Manager, Divisional Office, Malviya Nagar, Durg, District Durg (Chhattisgarh).

---Respondents

Shri Sudhir Agrawal, Advocate for the Insurance Company.
Shri Vinod Kumar Sharma, Advocate for respondent No.2 in M.A.C.No.1622/2009
and for the appellant in M.A.C.No.1431/2009.
Shri C.K.Sahu, Advocate for respondent No.1 & 2 in both the appeals.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/09/2017

1. These are the two appeals challenging the award dated 25/08/2009 passed by the Commissioner for Workmens Compensation, Labour Court, Durg in case number 144/W.C.Act Fetal/2006.

2. Vide the said impugned award, the Commissioner for Workmens Compensation has alleged the application of the claimants and awarded compensation of Rs.2,91,200/- with a direction that in case, if the amount is not deposited within 30 days, the amount shall carry interest @ 9% per annum. While passing the said impugned award, the Tribunal has also imposed penalty of Rs.1,45,600/- to be paid by the contractor under whom the payment of liability was fastened.
3. MAC No.1622 of 2009 is an appeal preferred by the Insurance Company assailing the liability. MAC No.1431 of 2009 is an appeal preferred by the contractor under whom the deceased was working questioning the imposition of penalty against the contractor.
4. So far as the appeal of the Insurance Company is concerned, they have challenged the appeal on the question of law "Whether the Commissioner of Workmens Compensation failed to appreciate the fact that, the Insurance Company had not insured the Electricity Board but had issued the policy only in the favour of M/s. Munder Electrical and therefore once when the accident arose at the hand of the officers of the Electricity Board, the policy issued in the favour of Munder Electrical-the Insurance Company cannot be fastened with the liability of payment of compensation. The other ground of challenge was the fact that, the actual insurer has not been made a party in the Claim Case as well as in the appeal and on this ground also, the liability of the Insurance Company should be exonerated. It was lastly contended that, the nature of work which was been executed by the deceased at the time of accident was not covered under the risk for which the policy was issued.
5. According to the counsel for the Insurance Company, firstly, the nature of work which was insured by the Insurance Company was of laying of line as per the contract which was issued to M/s. Munder Electrical. He further submits that, the accident arose when the officer of the Electricity Board took the deceased to a different locality and made him climb a electrical post for some work which was not a part of the contract and therefore the Insurance Company cannot be held responsible for indemnifying the said contractors in the given circumstances. It was further contended that, the accident occurred because of the act on the part of the Mr. Arun Sharma – an employee of the Electricity Board and not in the course of execution of work assigned by M/s. Sunder Electrical and therefore also the Insurance Company cannot be fastened with the liability.
6. Perusal of record would show that, the proprietor of M/s. Sunder Electrical had entered appearance before the Commissioner and have deposed

that, the deceased was his employee and that he had got a contract from the Electricity Board for laying of line and in the course of execution of the contract, the officer of the Electricity Board – Arun Sharma had asked the worker to perform some additional work when the accident arose. This evidence of Raghuveer Prasad – the actual contractor i.e. the insurer is sufficient to establish the fact that, the accident of the deceased took place “in the course of and arising out of employment.” Only because the deceased had climbed the electricity post at the instructions of employee of the Electricity Board by itself cannot exonerate the Insurance Company from indemnifying the insurer when the insurer himself admits before the Commissioner of having engaged the worker and accident occurred in the course of the employment.

7. The ground that the accident occurred because the deceased at the instance of the employee of the Electricity Board without the knowledge and consent of the contractor by itself would not take the accident out of the ambit of provision of the Workmens Compensation Act.
8. So far as, the provision of Workmens Compensation Act Section 3 categorically defines the condition under which the employer shall be liable to pay the compensation and the only condition required is that, the accident should occur in the course of and arising out of the employment.
9. In the instant case, the contractor is duly insured by the present appellant. The contractor has also admitted that, it was in the course of his employment that the deceased was made to climb the electricity post when the accident occurred resulting in his death. Thus, the necessary ingredients which are required for bringing the case under the provision of Workmens Compensation Act as is required under Section 3 of the Act is fully met with.
10. Thus, this court does not find any strong case made out by the Insurance Company calling for interference with the award where the liability has been fastened upon it since it has duly insured M/s. Munder Electrical covering the risk of 11 of the workers engaged by Munder Electrical.
11. So far as the objection of the Insurance Company that the Munder Electrical is not made a party is to trivial an issue, for the reason that, admittedly the proprietor of the said firm is the same person i.e. Raghuveer Prasad who himself had appeared before the Commissioner and have deposed accepting the contract, nature of work and the accident. It appears to be a typographical or a clerical error in mentioning Munder Electrical as Sundar Electrical. The said cannot by itself be a

strong case for initiating the proceeding before the Commissioner. Therefore, this ground was raised also stands negated.

12. So far as the appeal of the contractor is concerned, his limited argument is that, before imposing penalty, the Commissioner ought to have issue show cause notice as is mandatorily required under Section 4A-3 of the Workmens Compensation Act 1923 and which is by now a well settled proposition of law that before issuance of order of penalty, the Commissioner ought to have issued a show cause and then should have proceeded further and decided the same. But in the absence of which, finding of imposing penalty cannot be sustained.
13. Accordingly, the impugned order to the extent of imposing penalty against the appellant – contractor Sunder Electrical is set aside/quashed and the matter is remitted back to the concerned Labour Court for deciding the said issue afresh, after granting an opportunity of hearing to the appellant – Sunder Electrical in this regard.
14. Since all the parties are present before this court, they are directed to enter appearance before the concerned Labour Court i.e. Labour Court, Durg on 25/10/2017. The registry is directed to ensure that, the record of the case is sent back to the Labour Court, Durg promptly so that it reaches the Labour Court much before 25/10/2017.
15. The appeal of Sunder Electrical i.e. MAC No.1431/2009 thus stands allowed and the appeal of the Insurance Company i.e. MAC No.1622/2009 stands rejected.

Sd/-
(P. Sam Koshy)
Judge