

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 800 OF 2016

Khileshwari Bai, Wd/o Late Sanjay Markandey, aged about 22 years,
R/o Village- Deori, Post- Khanchadur, Tahsil- Gundardehi, District
Balod (C.G.)

... Appellant

Versus

1. R.K.M. Power Zen Pvt. Ltd., through Senior Officer (P & R Lisening),
Village- Uchapinda, Tahsil- Dabra, District Janjgir-Champa (C.G.)
2. Budhelal, S/o Late Jhunghiram, R/o Kanchadur, Deori, Tahsil-
Gundardehi, District Balod (C.G.)
3. Sribai, W/o Shri Budhelal, R/o Kanchadur, Deori, Tahsil- Gundardehi,
District Balod (C.G.)
4. Mahesh Kumar, S/o Shri Budhelal, R/o Kanchadur, Deori, Tahsil-
Gundardehi, District Balod (C.G.)
5. Kumari Shantibai, D/o Shri Budhelal, R/o Kanchadur, Deori, Tahsil-
Gundardehi, District Balod (C.G.)

... Respondents

For Appellant	:	Mr. S.P. Kale, Advocate.
For Respondents 2 to 5	:	Mr. S.K. Guha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/07/2017

1. Challenge in the present appeal is to the order dated 27.5.2016
passed by the Commissioner for Employees Compensation-cum-Labour
Court, Janjgir-Champa, in Case No. 42/E.C.A./COC-I-B/15(F)Dep.
2. The order-sheets of the Court below which have been enclosed
along with the present appeal, reflect the callous and negligent attitude of
the Commissioner for Employees Compensation-cum-Labour Court,
Janjgir-Champa, while conducting herself as the Presiding Officer of a
Court.
3. Brief facts of the case relevant for adjudication of the present appeal
are that one Sanjay Markandey was an employee working under the
Respondent No.1 as a Security Guard and who met with an accident on
16.11.2015.

4. Since the accidental death of the said employee Sanjay Markandey was not disputed, the employer i.e. Respondent No.1 voluntarily deposited the amount payable to the dependants of the deceased employee under the provisions of the Employee's Compensation Act on 14.12.2015. The management deposited an amount of Rs. 9,00,880/- (Nine Lakh Eight Thousand & Eighty only). While depositing the said amount, the management had clearly reflected the details of the family members of the deceased which included the name of the present Appellant i.e., the widow of the deceased employee.

5. Later on, the parents and the siblings of the deceased employee and the widow of the deceased employee, moved two separate claim applications before the Commissioner for Employees Compensation-cum-Labour Court, Janjgir-Champa, and the case was registered as Case No. 42/E.C.A./COC-I-B/15(F)Dep.

6. After the proceedings had begun, twist in the proceedings took place on 27.4.2016 when the parents of the deceased employee appeared before the Court below along with an affidavit as evidence and thereafter the matter was adjourned for 27.5.2016 for the evidence of the widow of the deceased employee. On 27.5.2016, the widow of the deceased employee had sent her maternal uncle to the Court intimating the Court that since her brother had received serious injuries in an accident in which his right leg and right hand got amputated and he has been hospitalized facing a life and death situation, she could not come to the Court and prayed for an adjournment. The Court below granted an adjournment and fixed the case for 29.6.2016.

7. However, after the maternal uncle of the Appellant left the Court, the Labour Court again took up the case on the same day at the request of the parent and siblings of the deceased and proceeded further with the case

and ordered for disbursement of the amount of compensation deposited before it and in the course held that the present Appellant and all the other claimants are entitled for equal share on the compensation deposited and ordered for payment of Rs. 1,80,000/- to each of the claimants. Only the father of the deceased employee has been ordered to be paid Rs.380/- more. It is this order dated 27.5.2016 which is under challenge in the present appeal.

8. An issue was raised whether the appeal would be maintainable under the provisions of Section 30 of the Employee's Compensation Act or not?

9. After perusal of the provisions of Section 30(1)(c) of the Employee's Compensation Act, this Court has no hesitation in reaching to the conclusion that the appeal is in fact maintainable.

10. So far as the challenge on the merit part is concerned, again this Court has no hesitation in reaching to the conclusion that there appears to be some unwanted haste shown on the part of the Commissioner in the disbursement proceeding. Further, the Commissioner again for reasons best known had taken up the matter on the same day after adjourning the case for a month on 27.5.2016. Moreover, in a case of disbursement of compensation under the Employee's Compensation Act, it is a settled position that the widow is the first claimant on the death of her husband and only thereafter could the claim of the other dependants be considered.

11. In the instant case, the Commissioner did not care to take the evidence of the widow as only then could have proceeded further. It is also a case where the Commissioner did not even care to get the parents of the deceased employee cross-examined before deciding their dependency. Moreover, there also appears to be an error of law on the part of the Commissioner in not considering the fact that one of the siblings of the

deceased, i.e., the brother of the deceased, was aged about 18 years and therefore he had become a major plus his parents were alive. Therefore, the dependency of the said claimant Mahesh Kumar also appears to be erroneous.

12. The perusal of the record shows that the Commissioner has shown some unnecessary haste in concluding the proceedings and ordering for disbursement. From the pleadings before the Commissioner, it clearly reflects that the said officer has acted in a manner which is unbecoming of an officer particularly when the said officer is presiding a Court and the proceeding where has to be judicially conducted. In the instant case, it does not appear that the Commissioner has applied her judicious mind while deciding the matter on 27.5.2016.

13. So far as the dependency part is concerned, the same has been defined under Section 2(d) of the Employee's Compensation Act, which for ready reference is reproduced below:

“2(d) “dependant” means any of the following relatives of deceased employee, namely:—

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and
- (ii) if wholly dependant on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
- (iii) if wholly or in part dependant on the earnings of the employee at the time of his death,—
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) a widowed daughter-in-law,
 - (f) a minor child of a pre-deceased son,
 - (g) a minor child or a pre-deceased daughter where no parent of the child is alive, or
 - (h) a paternal grandparent if no parent of the employee is alive;

[*Explanation.*— For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.]”

14. So far as the manner in which the proceedings have been conducted it clearly reflects that the provisions of the Employee's Compensation Act or the procedures required in determining the dependency, have been kept at bay by the Commissioner while deciding the case.

15. For all the aforesaid reasons, the order dated 27.5.2016 passed by the Commissioner in Case No. 42/E.C.A./COC-I-B/15(F)Dep. is not sustainable and the same deserves to be and is accordingly set aside.

16. In the given factual background and the manner in which the case has been conducted by the Commissioner for Employees Compensation-cum-Labour Court, Janjgir-Champa, this Court feels that the ends of the justice would meet if while remitting the matter back to the Court below the case is transferred from the Labour Court, Janjgir-Champa to the Labour Court, Bilaspur, for a fresh adjudication on the claim application.

17. The transfer of the case to the Labour Court, Bilaspur would also suit the widow and the parent and siblings of the deceased employee as all of them are residents of Balod district and for whom Bilaspur district would be much closure and convenient as compared to Janjgir-Champa.

18. Since the entire matter is being remitted back to the Court below, including the observation so far as the deduction of amount for the publication part is concerned, this Court leave it open for the Commissioner for Employees Compensation-cum-Labour Court, Bilaspur also to decide on the issue as to whether the said amount for publication has to be deducted from the amount due to the claimants or it would be the responsibility of the employer to take steps for the publication part.

19. Accordingly, let the entire proceedings after the records are received by the Labour Court, Bilaspur be concluded within an outer limit of three months. The Registry is directed to sent the record to the Labour Court, Bilaspur. Further, the Labour Court, Janjgir Champa is also directed to ensure that all records that are available with the Labour Court at Janjgir pertaining to the present case may also be sent/transferred to Labour Court, Bilaspur.

20. Let a copy of this order be sent to the Chairman, Industrial Court for record purposes.

**Sd/-
(P. Sam Koshy)
Judge**

/shard/