

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3173 of 1996 (O&M)

Date of decision: 28.04.2017

Bimla Devi and others

... Petitioners

versus

Balwinder Singh @ Kalu and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Rajesh Bhardwaj, Advocate for the petitioners.

Mr. Sanjiv Gupta, Advocate for respondent No.1.

G.S. SANDHAWALIA, J. (ORAL)

The present appeal filed under Section 30 of the Workmen's Compensation Act, 1923 (in short the 'Act') is directed against the order of Commissioner dated 19.08.1996. Vide the impugned order the claim of the appellants was dismissed on the ground that the deceased would not fall under the definition of the Workmen as defined under the Act since as per the evidence led he was spraying medicine on the plants and the same had effected his brain which caused his death on 21.06.1994. It was held that as per the evidence, the deceased Bal Kishan was spraying pesticides on the crop of respondents and the poisonous substance had effected his brain and therefore, there was no evidence that he was doing the farming with the help of tractor, electricity and other mechanical implements run by power and electricity and therefore, the claim was held not to be maintainable. The

finding was recorded on issue No.4 wherein the application was held not maintainable under the Workmen's Compensation Act, the onus to prove of which was on the respondent.

Resultantly, the other issues whether there existed any relationship of employee and employer and whether the accident took place arising out of the course of employment and whether the applicant were dependants of the deceased were not adjudicated upon. The reasoning given was on the strength of the provisions of Section 2 (1) (n) of the Act wherein definition of Workman was provided and reference was accordingly made to Schedule II Clause 2 (a) to decide the issue of maintainability against the claimant on the ground that the deceased was not employed in the work of farming or agricultural operations with the help of a tractor or with other contrivances driven by stream or other mechanical power or by electricity.

The substantial question of law that thus arises for the decision before this Court is whether the Commissioner was justified in non-suiting the appellants on this account only. Counsel for the petitioners has referred to Section 2 (i) (n) and Schedule II which is reproduced as under to submit that the list of persons who are subject to provisions of Section 2 (i) (n) are included in the definition of the Workman, as per the provisions in force at the time of accident.

(n) workman" means any person who is--

(i) a railway servant as defined in section (34) of Section 2 of the Railways Act, 1989 (24 of 1989) not permanently

employed in any administrative, district or sub- divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union]; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

Reference is accordingly made to Clause (xli) and (xliv) to point out that even persons who are employed in cultivation of land or rearing and maintenance of live-stock or forest operations or employed in spraying and dusting or insecticides or pesticides in agricultural operations or plantations would also come under the definition of Workmen. It is accordingly argued that the said Clauses read as under:

(xli) employed in cultivation or land or rearing and maintenance of live-stock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty five persons have been employed; or

(xliv) employed in spraying and dusting or insecticides of pesticides in agricultural operations or plantations.

The argument is well justified. Even though the pleadings were to that effect that the work was being done and the spraying of pesticides was being done with the help of tractor, electricity and other mechanical implements run by power and electricity, the definition under the above said Clauses would cover the claimants and the Commissioner was not justified in non-suiting the claimants on the this ground. The Commissioner has not taken into account the above said clauses which would prima facie cover the case of the claimants and bring the deceased within the definition of Workman. Resultantly, the finding which has been thus recorded under issue No.4 is not justified in the facts and circumstances of the case.

The question of law as such is answered in favour of the appellant by holding that the deceased was employed in spraying and dusting of pesticides and agricultural operations in view of the specific averments made, and thus would be covered under the above said

definition. Resultantly, the findings recorded are set aside under issue No.4 and the appeal is allowed. Since, no findings have been given on merits, the matter is remanded to the Commissioner Karnal for adjudication, on merits.

The parties shall put in appearance before the said Court on 29.05.2017.

(G.S. SANDHAWALIA)
JUDGE

28.04.2017
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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No