

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 8447 of 2014 (O & M)

Reserved on: 18.01.2017

Date of decision: 01.02.2017

Executive Engineer/Deputy General Manager, Sub Urban Division
DHBVNL, Bhiwani and another

....Appellant(s)

Versus

Smt. Priyanka and others

...Respondent(s)

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

Present: Mr. K.S. Malik, Advocate,
for the appellants (in FAO Nos. 8447 and 8543 of 2014)
and for respondents no. 2 and 3 (in FAO No. 6093 of 2015).

Mr. Sanjay Vashisht, Advocate,
for the appellants (in FAO No. 6093 of 2015)
and respondents no. 1 to 3 in FAO No. 8447 of 2014).

Mr. Shakti Kaushik, Advocate,
for Mr. Vinod S. Bhardwaj, Advocate,
for respondent no. 4 (in FAO No. 8447 of 2014)
and for respondent no. 1 (in FAO No. 6093 of 2015).

Mr. A.K. Goyal, Advocate,
for respondents no. 1 to 3 (in FAO No. 8543 of 2014).

Mr. Surinder Gandhi, Advocate,
for respondent no. 4 (in FAO No. 8543 of 2014).

G.S.SANDHAWALIA, J.

The present judgment shall dispose of three appeals i.e. FAO Nos. 8447 and 8543 of 2014 and FAO No. 6093 of 2015 since the order impugned dated 31.07.2014 is common in the first two appeals passed by the Commissioner under the Employee's Compensation Act, 1923 (in short 'the Act'). Facts are being taken from ***FAO No. 8447 of 2014, Executive***

Engineer/Deputy General Manager, Sub Urban Division DHBVNL,

Bhiwani and another vs. Smt. Priyanka and others.

The question of law which is common in all the appeals is “as to whether the principal-employer is liable to pay the amount of compensation when the employee died while working under the supervision and on the premises of the principal employer and his right for indemnification.”

Vide the impugned order, the principal-employer namely the Dakshin Haryana Bijli Vitran Nigam (in short 'DHBVN') has been held liable to deposit a sum of ₹7,19,035/- against the compensation amount and interest within 30 days, failing which, it would further be also liable to pay simple interest @ 12% per annum. The Commissioner took into account the fact that the deceased was aged around 26 years and limited his wages at ₹4,000/- and resultantly applied the relevant factor of 215.28 to award ₹4,30,560/- as compensation. The interest was awarded @ 12% per annum from the date of first notice from 31.12.2008 till the date of the order to the tune of ₹2,88,475/-. Reliance was placed upon Section 12 of the Act on the ground that since the accident occurred in or about the premises the principal while undertaking the work and which was otherwise under the control and management of the said principal to hold that the principal employer would be liable to pay to the workman employee engaged in the execution of the work.

The case of the claimants, who were the widow of Sunil Kumar and the parents was that respondent no. 4-Naresh Kumar was a contractor working under the Nigam for proper functioning and operation, maintenance of the electric supply system in the area of Dhigawa, District Bhiwani. He had been employed as a lineman for about last 3 years and was

working on the operations and getting ₹4,050/- per month as salary. There was a relationship of employee-employer. He was working under the directions from the contractor alongwith other employees and had been asked to climb the electric pole on 27.05.2008 on which a transformer had been mounted for rectifying the fault. In the process of discharging his duties, he got electrocuted and fell down from the pole and he received severe shock and burn injuries due to the electric current and received some injuries due to fall on the ground and was moved to the Government Hospital, Loharu, where he was declared dead. Resultantly, inquest proceedings under Section 174 Cr.P.C. and post mortem was conducted which proved the fact that he had died due to electrocution and resultantly, the claim was filed for ₹15,00,000/- after serving the legal notice.

The defence taken by the appellant-Nigam was that the deceased was working under the control and directions of Naresh Kumar, contractor-respondent no. 4 and, therefore, responsibility of discharging of liability was of the said contractor and there was no liability of any kind or any relationship of employer-employee. It was admitted that due to heavy storm on 05.05.2008, many electric poles of the Nigam had broken and the faults were being removed from the labour including the deceased who was working under the control of the contractor.

The contractor-respondent took the plea that there was no relationship of employer-employee and whenever a work is to be done, notice inviting tender was issued and the contract is given to that person. He had never employed the deceased as lineman or paid any salary and there was no such relationship. The contractor was not entitled to cure the damage due to dust and storm and he had never directed Sunil Kumar to

climb on the pole and was not aware about electrocution of Sunil Kumar.

The claimants examined as many as 6 witnesses whereas the Nigam examined Pawan Kumar as RW-1 and he also appeared as a witness.

As noticed, the Commissioner has fixed the liability in view of the provisions of Section 12 of the Act holding that the principal employer is liable to pay the workman and that the employer was not liable to be indemnified. It has been held that from the documentary as well as the oral evidence, it was clear that the contractor engaged deceased Sunil Kumar and other employees for the work of the principal employer and their documents produced in evidence were relied upon to notice that there was a report Ex.AW-2/F that the accident had occurred due to the fault of the Junior Engineer Shri Om Parkash Ranga. Reliance was also placed upon DDR and the post mortem report, the death certificate and legal notice etc. to hold that the death had taken place due to electrocution and the repair work was being taken from the labour of the contractor when the deceased met with a fatal accident. Resultantly, it was held that no suggestion also had been made by the contractor as to why he had been named and how the applicants came to know about the site of the work and his name.

From the evidence on record also, it is evident that it was the categorical case of the claimants and duly supported by the employees of the Nigam also that deceased was working under supervision of the said J.E. Even the said J.E. appeared as AW-5 and had stated that the tender work had been issued and the work was going on under the supervision of the contractor on one feeder on which the deceased was working where he was incharge. Similarly, in another portion, Pawan Kumar, Kuldeep Kumar and Chander Hans were working. He also placed on record sample of the work

order and produced the measurement book also. Similarly, Dalip Singh, the father of the deceased has also stated on the same lines putting the fault on the contractor.

From the above evidence, it is apparent that the Commissioner is correct in coming to the conclusion that the contractor engaged the deceased Sunil Kumar and other employees for work of the Nigam and thereafter had rightly shifted the burden of proof upon the said contractor. Keeping in view the documentary evidence on record regarding the repair of the work which was being taken from the contractor, it was rightly held that he was doing work and received fatal injuries during the course of employment with the contractor and the Nigam and, therefore, the fatal injuries were received in the course of his employment which resulted in his death. Section 12 reads as under:-

“12 Contracting. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any [employee] employed in the execution of the work any compensation which he would have been liable to pay if that [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the [employee] under the employer by whom he is

immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor [, or any other person from whom the [employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the [employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a [an employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

A perusal of the above Section would go on to show that the same is a beneficial piece of Legislation for the employee in as much as it appears as a recourse to claim compensation from the principal employer and it is open to the principal to be indemnified from the contractor in case the work had been contracted out. The principal would accordingly be, thus, liable to pay to any employee in the execution of the work any compensation which he would have been liable to pay if the employee had been immediately employed by him. Under sub-clause (2), his entitlement

to be indemnified by the contractor is there. Sub-section (4) provides that Section 12 of the Act would not apply where the accident had occurred elsewhere than in or about the premises on which the principal had undertaken or usually undertakes, as the case may be, to execute the work. The avowed object of the said Section is to confer benefits on the employee and their legal representatives in the cases of death for their right to compensation either from the principal or from the contractor at their option. The purpose being that a contractor may be merely a man of straw and, therefore, might not be in a position as such to pay off the claims immediately and, therefore, their interests were to be protected to avoid any direct confrontation. The right of the principal to be indemnified has thus been incorporated. The interest of the principal employer has been duly safeguarded under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.

Reliance can be placed upon the judgment of the Gujarat High Court in ***Koli Mansukh Rana vs. Patel Natha Ramji, 1992 ACJ 772***. In the said case, the employee was working as a contractor and the relief was denied by the Commissioner on the ground that though the injured was workman but he had not been employed by the principal employer. Accordingly, while keeping in view the provisions of Section 12 of the Act, it was held that the principal had engaged the contractor and the work was ordinarily a part of trade and business of the principal and the accident had occurred on the premises of the principal which was under his control and management and the course of employment and therefore, the workman could claim compensation from both the contractor and the employer. The relevant portion reads as under:-

“13-A. Now the question would arise as to whether in absence of the original employer Bachu Nanji, can the applicant claim compensation under [section 3](#) of the Act with the aid of [section 12](#) of the Act? Answer to this question, spontaneously, would be in the affirmative. In view of the clear provisions in [section 12](#) of the Act, a right is given to the workman to claim compensation either from the contractor, being the employer or from the principal or from both. Thus, option is given to the victim of employment injuries to claim compensation either from the principal or from the employer. Therefore, the applicant is entitled to claim compensation under [section 12](#) of the Act from the principal also and it will be open for the principal to go for indemnification proceedings under the provisions of [section 12](#) of the Act. Therefore, even in absence of the employer, Bachu Nanji, it will be open for the applicant to claim compensation from the principal. The very object behind the provisions of [section 12](#) of the Act is to secure compensation to the workman who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own business and interest is expected to provide a surer basis for payment of the injured workman than the intermediary, who may often turn out to be a man of straw, from whom compensation may not be available. This is the purpose for which the claimant is given the option under [section 12\(3\)](#) of the Act to claim the compensation either from the principal or from the employer.

14. In view of the facts and circumstances of the present case, the applicant is entitled to claim compensation from the opponent-Patel Natha Ramji, being the principal of the contractor, Bachu Nanji, who

had engaged the applicant as his workman. Therefore, there is no hesitation in holding that the applicant is entitled to compensation from respondent herein/original opponent.”

A Division Bench of the Kerala High Court in ***K. Kodalingam vs. Superintending Engineer, Project Circle, Public Works Department & another, 1995 (6) SLR 190*** also held to the similar effect, wherein the deceased employee was working under the contractor engaged by the PWD for digging of the canal. It was held that even though there was a contract inter-se the contractor and the Government, the liability to pay which had been affixed upon the contractor was not correct and Government was liable to pay being the principal employer with a right of indemnification in view of Section 12(2) of the Act.

The said view was followed by another Division Bench of the said Court in ***Malankara Rubber and Produce Company Limited, Kottayam vs. Hameed, 2000(4) SCT 816***, in which the claim of the father of the workman had been fixed on the principal employer. The rubber estate owners had challenged the same on the ground that the employment was of the contractor. It was accordingly noticed that the deceased was working for the expansion of the factory building which was connected with the expansion of the business of the employer and occurred in the factory premises under the control of the said principal employer where the business was being carried on and therefore, the principal employer was liable to compensate for the death of the workman.

As noticed, in the present case, a factual finding has been rightly recorded that the work was being executed on the electricity lines of the Nigam under the direct control and supervision of the Nigam officials

and, therefore, the Commissioner has rightly held that the principal would have no right of indemnification against the contractors keeping in view the report that the fault was of the officials. The finding, as such, does not suffer from any infirmity or illegality and no substantial question of law as such arises in the present set of appeals.

Counsel for the appellant/Board did not press the issue that interest was not payable from the date of notice keeping in view the settled principle by the Apex Court in ***Pratap Narain Singh Deo vs. Shrinivas Sabata and another, 1976 (1) SCC 289*** whereby, four Judges of the Apex Court held that interest was payable from the date of accident. This Court in ***New India Assurance Company Ltd. vs. Manphool Singh and others, 2009 ACJ 458*** followed the said view and clarified that where there is a conflict between the judgment of a Constitutional Bench and a Division Bench delivered later, the opinion of the larger Bench is to be followed. Thereafter, the matter also arose before the Apex Court in ***Oriental Insurance Co. Ltd. vs. Siby George, 2012 (6) SCR 1079*** and it was held by the Apex Court that the interest is to be levied on default per se and accordingly, the appeal filed by the insurance company was dismissed. Thereafter, in ***Saberabibi Yakubbbhai Shaikh and others vs. National Insurance Co. Ltd. and others, 2014 (2) SCC 298***, the said view was followed and it was held that the interest @ 12% per annum from the date of accident is to be paid.

Accordingly, the question of law is answered against the appellants and they are held liable to pay the amount of compensation being the principal employer and in view of the fact that there was a mistake on their part which led to the death of the employee. The right of

indemnification has rightly been denied against the contractor.

Accordingly, the appeals are dismissed and the amounts awarded are upheld.

01.02.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

