

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 887 of 2012**

Samriddhi Khanij and Agro Private Limited (No. U13201 CT 2003 PTC 15670),
through Director, Shri Vaibhav Dhody S/o Shri Rajesh Dhody, aged about 28
years, R/o 1, Malviya Nagar, Durg, Tahsil and District Durg (C.G.).

---- Appellant**Versus**

1. Ajoo Ram Sahu S/o Duklha Ram Sahu, aged about 69 years, R/o village –
Deori, Police Station – Dhamdha, District Durg (C.G.). (Claimant)
2. Ram Swaroop Giri S/o Raghunandan Giri, aged about 69 years, (Supervisor
Bharni Dhody Farm), Tahsil Dhamdha, District Durg (C.G.).

----Respondents

For Appellant	:	Shri V. G. Tamaskar, Advocate.
For Respondent no.1	:	Shri Shrawan Agrawal, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26/02/2018**

- Present is an appeal filed under Section 30 of the Workmen's Compensation Act challenging the award dated 14/08/2012 passed by the learned Commissioner for Workmen's Compensation, Labour Court, Durg in case No.145/2004/W.C.Act/Fatal. Vide the impugned award, the learned Commissioner, in a death case, has awarded compensation of Rs.1,56,206/- and 50% of the awarded amount i.e. Rs.78,103/- as penalty. It was ordered that the compensation amount shall also carry simple interest @ 9% per annum if the same is not deposited within 30 days from the date of award.
- 2. The facts of the case in brief are that, on 31/12/2003, deceased Rameshwar Sahu, aged around 24 years was working in the farm of the appellant. In the course of cutting of trees grown in the farm of the appellant, the deceased came in contact with the electric line passing through the farm

and died because of electrocution. The legal representative of the deceased i.e. the father filed a claim application under the provisions of Workmen's Compensation Act. Initially, the claim application was filed against Ramswaroop Giri – the caretaker of the farm and Rajesh Dhodi. Subsequently, it was learnt that the farm in fact was transferred in the name of Samriddhi Khanij and Agro Pvt. Ltd. Therefore, by way of amendment, the said Samriddhi Khanij and Agro Pvt. Ltd. was also made respondent before the Labour Court. After pleadings were complete, the Labour Court initially passed an award on 22/06/2009 holding the present appellant responsible for payment of compensation. The said award was subjected to challenge in an appeal registered as MAC No.1091/2009 before this High Court. The said appeal preferred by the appellant stood decided vide order dated 12.07.2011 whereby this Court set aside the order dated 22.06.09 passed by the Commissioner and remitted the matter back to the Commissioner for reconsideration and for passing an award afresh after granting opportunity to the parties to amend the pleading and to lead further evidence both oral and documentary if required. Subsequent to the matter being remanded to the Labour Court, fresh order was passed vide impugned order dated 14.08.2012 Annexure A-9 wherein the present appellant has been fastened with the liability of payment of compensation of Rs.1,56,206/- with penalty of Rs.78,103/- i.e. 50% of the principle amount awarded.

3. It is this award dated 14.08.2012 which is under challenge in the present appeal.

4. Contention of Shri Tamaskar, counsel appearing for the appellant, assailing the impugned award is that the entire award is bad in law for the reason that there is no evidence whatsoever on record with which it could be said that the deceased Rameshwar in fact was an employee of the present appellant. No evidence was brought on record from the side of the claimant

to establish the fact that there was an employer and employee relationship between the present appellant and the deceased. He submits that the learned Labour Court has failed to take note of the fact that when the claim application was filed at the first instance, the present appellant was not a party as an employer neither was it the stand of the claimant at any point of time till the amendment was made. Thus, in the absence of any substantive material to establish employer and employee relationship, the Commissioner for workmen's compensation could not have allowed the claim application. Thus, prayed for setting aside of the impugned award.

5. Per contra, counsel appearing for the claimant submits that the appeal does not have any substance in as much as the findings arrived at by the learned Commissioner are finding of facts and that there is no substantial question of law made out by the appellant calling for an interference with the impugned award. According to the counsel for the claimant, there were sufficient materials available before the Court below to establish that the deceased died because of the accident that occurred within the premises of the appellant which is also established from the evidence of the witnesses on either side.

6. Having heard the contentions put forth on either side and on perusal of the record what is relevant at this juncture is the fact that the statement of Ram Swaroop who is said to be the supervisor/care taker of the farm under whose supervision the deceased in the course of cutting of branches of the trees died because of electrocution. The said witness during the course of evidence has admitted the fact that he was an employee of the present appellant and that the accident did take place within the premises of the appellant. He has also admitted the fact that the police authorities had initiated a prosecution case against him in the capacity of the supervisor of the farm of the appellant and the matter was pending before the Court of

Judicial Magistrate. In addition to the aforesaid witness, it would be relevant to refer to the evidence of the father of the deceased namely Ajoo Ram Sahu who has also deposed that the deceased had gone to the house of the appellant for cutting branches of the trees when he died an accidental death.

7. So far as the evidence on the part of the appellant is concerned, they had examined one Vaibhav Dhodi son of Rajesh Dhodi who was the actual purchaser of the said farm. In his deposition Vaibhav Dhodi accepts the accident that took place on 31/12/2003. He is not able to bring any evidence in rebuttal or to disprove the accident and the accidental death of the deceased. He admits the fact that a criminal case was initiated against Ramswaroop, the person who was the in-charge of the farm. From his deposition it is also established that the Directors of Samridhi Khanij and Agro Private Ltd. are members of the same family.

8. Under the aforesaid factual matrix of the case, the place of accident to be within the premises of the appellant stands established. Further it also stands established that the deceased was engaged at the farm of the appellant for the purpose of cutting of branches of the trees grown in the farm. Thus, from the deposition, the employment part and the accidental death stand concluded and the said issue now cannot be challenged as the same would be a finding of fact which cannot be brought within the purview of a substantial question of law.

9. This Court while admitting the appeal on 08.03.2013 had framed following substantial questions of law:

- “i) Whether Commissioner Workmen Compensation was justified in imposing penalty amounting to Rs.78,103/-?
- ii) Whether order of penalty is in conformity with the requirement of Section 4 (1), (Ka)?

iii) Whether the Commissioner was justified in awarding interest and that too @ of 9% and that too payable on expiry of 30 days from the date of award or claimant is entitled for claiming interest @ of 12% and that too from the date of accident in the light of law laid down in Pratap Narain Singh Deo Vs. Srinivas Sabata and another reported in (1976) 1 SCC 289 to the respondent no.1 (Claimant) even though the respondent No.1 has not filed any appeal against that part of the order so as to make the award in conformity with the law laid down by the Supreme Court in Pratap Narain case (supra)?

10. So far as the first substantial question of law is concerned, the provision of law stands in favour of the appellant owner wherein Section 4 (A) Sub section 3 clearly envisages the requirement of a show cause notice before order under challenge is passed. For ready reference Sub section 3 of Section 4A of the Employees' Compensation Act is being reproduced hereunder:

- “(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-
- (a)
- (b) if, in his opinion there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:
- Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

11. In view of the same, substantial question No.1 stands decided in favour of the appellant holding that the imposition of penalty and awarding of Rs.78,103/- as penalty is in contravention to the statutory provisions. Hence, the imposition of penalty is not sustainable and the same deserves to be and

is accordingly set aside. If any amount has already been deposited by the appellant in respect of penalty part, the same shall be refunded to the appellant.

12. The second substantial question of law stands answered while deciding the substantial question No.1. Hence, the said substantial question of law need not be answered.

13. The third substantial question of law is in respect of whether the commissioner was justified in awarding interest @ 9% that too only in the event the award is not deposited within 30 days.

14. As regards the granting of interest is concerned, the law by now is well settled. A perusal of the record would show that the learned Commissioner has not awarded interest on the awarded amount rather has ordered that in the event the amount is not deposited within 30 days, the same shall carry interest @ 9% from the date of award. Section 4A sub section 3(a) deals with granting of interest which for ready reference is reproduced hereinunder:

- “3(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due;”

15. Under the given circumstances, this Court is of the opinion that the first part of the third substantial question of law stands answered in the negative and it is held that the Commissioner was not justified in awarding interest @ 9% if the award is not deposited within 30 days. The later part of the third substantial question of law stands answered in the affirmative holding that the claimant shall be entitled for simple interest on the awarded amount @ 12% from the date of application.

16. Thus, the appeal stands allowed in part to the extent that the order of imposition of penalty stands set aside and it is ordered that the claimant shall be entitled for simple interest @ 12% from the date of application.

17. It shall be open for the respondent claimant to move an appropriate application before the Commissioner if he so desires claiming for penalty under the provisions of Section 4A 3(a) of the WC Act and if such an application is made, the Labour Court is expected to decide the matter on priority basis.

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