NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 703 of 2013

1. Sona Bai And Ors. W/o Late Devarram Aged About 38 Years
2. Rohidas S/o Late Devarram Aged About 14 Years
3. Devdas S/o Late Devarram Aged About 11 Years

Appellant Nos. 2 & 3 being Minor, Through Mother Sona Bai, aged about 38 years, W/o Late Devarram All R/o Village Jhanda Talab, Tah. Dongargarh, Thana- Chichola, Post- Lalbahadur Nagar, Rajnandgaon C.G.

---- Appellants

Versus

1. Chief Executive Officer, Janpad Panchayat Dongargarh, Distt. Rajnandgaon C.G.
2. Sarpanch Gram Panchayat Jhanda Talab, Janpad Panchayat-Dongargarh, Distt. Rajnandgaon C.G.
3. State Of Chhattisgarh, Through Collector, Rajnandgaon C.G.
4. Chief Executive Officer Jila Panchayat, Rajnandgaon C.G.

---- Respondents

For Appellants	Shri Shalvik Tiwari, Advocate on behalf of Shri Parag Kotecha, Advocate.
For State	Shri S.P. Kale, Dy. A.G.
For Respondent No.4	Shri Pawan Shrivastava, Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

19/09/2018

1. Present is an appeal by the claimants challenging the order dated 18.06.2013 passed by the Commissioner for Workmen's Compensation, Rajnandgaon in case No. 23/W.C.Act/2012 (Fatal).

2. This appeal is admitted on the following substantial question of law:

> “Whether the learned Commissioner is justified in allowing the preliminary objection in respect of acceptance of Rs.25,000/- by the claimant as compensation in MGNREGA Scheme & under Section 10 of Workmen's Compensation is not tenable?

3. With the consent of both the parties, the matter is heard finally.

4. The brief facts of the case are that the appellants have preferred the claim application under Section 10 of the Workmen's Compensation Act with an averment, that they are the dependent on the deceased namely; Devarram, who died due to stress & excessive work taken by the respondents.

5. The Commissioner, Workmen Compensation Act after considering, dismissed the claim application on the basis of preliminary objection made by the respondents.

6. It is this order which is under challenge in the present appeal.

7. Counsel for the appellants submits that during the employment, the deceased Devarram died due to excessive work taken by the respondents and the cause of death was related to the employment. He further submits that without giving any opportunity to the appellants to lead evidence regarding the death of deceased and cause of death, preliminary objection raised by the respondents was accepted. The objection only on the basis that amount of Rs.25,000/- as per

the scheme of MGNREGA received by the claimant.

8. The proviso of MGNREGA and Workmen's Compensation is separate and during the employment of the respondents, the employee died and hence his legal heirs are entitled for Workmen's Compensation without giving any opportunity of hearing. He also submits that entire case is required to be decided on the merits of the case after taking evidence and the opportunity be given to the appellants and decide the preliminary objection raised by the respondents.

9. Counsel for the State submits that definitely the death of the deceased was due to heart attack and it may be natural death. Hence, the Commissioner has rightly dismissed the claim of the appellants based on the preliminary objection made by the State. There is no evidence available before the trial Court but without giving any opportunity to the appellants and it is very difficult in primary stage to decide upon the cause of death, whether it was due to stress and excessive work taken by the respondents or by the natural death. According to the learned State counsel since an amount of Rs.25,000/- as per the scheme of MGNREGA received by the claimant, no case is made out in their favour.

10. In view of the aforesaid factual matrix of the case, the substantial question of law stands answered in the negative and the impugned order passed by the learned Commissioner is incorrect and hereby set aside. Under Scheme of MGNREGA only 25,000/- taken by the appellant and they were

also entitled for Workmen's Compensation or not is a question of law and this fact is required to be decided by the concerned Commissioner after taking the evidence & only on the preliminary objection the claimant has taken Rs.25,000/- as per MGNREGA scheme, it is not justified without giving any opportunity to both the parties to lead the evidence and prove their case and decide the factual and legal position of both the act.

11. Accordingly, the impugned order dated 18.06.2013 is set aside and the matter is remitted back to the concerned Commissioner for fair trial as early as possible after giving opportunity to both the parties to adduce the evidence according to law and the respondents are at liberty to raise the objection, if any, before the Commissioner.

12. The appeal is allowed to the extent indicated above.

13. A copy of this order be sent to the concerned Commissioner forthwith.

Sd/-
Gautam Chourdiya
Judge

Akhilesh