

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 21-6-2018

Order passed on 05-7-2018

MAC No. 550 of 2012

- Krishna Iron Strips And Tubes Private Ltd. Through its Managing Director, village Sarora, PS Urla, Raipur (CG).

---- Appellant.

Versus

- Smt. Sammat Bai Kurre w/o. Mannu Kurre, aged about 32, occupation labour , r/o. Behind Shakti Chowk, Sarora, PS Urla, Raipur (CG)>

---- Respondent

For appellant	:	Mr. Vinod Deshmukh Advocate.
For respondent	:	None.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This appeal is preferred under Section 30 of the Workmen/Employees Compensation Act, 1923 (for short, the Act, 1923") against the award dated 27-3-2012 passed by the learned Commissioner for Workmen Compensation Act, 1923, Raipur (CG) in case No. 137/WCA/07 (N on fatal) (Old Case No. 151/WCA/2007 (Non fatal) whereby the Commissioner directed the appellant to deposit the award of compensation of Rs.88,063/- within a period of one month, failing which the appellant would be liable to pay 10% interest on the said amount.
2. As per the claimant/respondent, on 21-9-2006 she was working in the company of the appellant and due to chemical effect/infection, she sustained injuries in her both eyes which resulted into permanent partial disability of loss of her eyes and loss of vision.

3. As per the appellant, respondent was not employed, in the establishment of the company of the appellant and there was no relation between the parties as employer and employee and the respondent did not sustain injury during the course of employment. In support of his arguments, he placed reliance on the decision of Hon'ble the Supreme Court in the matter of **Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali and another, reported in 2006 AIR SCW 6009 and Mallikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Co. Ltd and another, reported in 2009 AIR SCW1688.**
4. Being dissatisfied with the aforesaid award, the appellant has filed this appeal while exercising the powers enumerated under Section 30(1) of the Act, 1923. Vide order dated 6-9-2012, this Court has framed the following substantial question of law.

“Whether the Commissioner for Workmen Compensation has legally erred in awarding amount of compensation holding respondent sustained permanent disability to the extent of 40% for want of any medical evidence”?
5. From the evidence of the appellant and his witness Laxman Tekam, it is established that the respondent was working as labour on 21-9-2006 at about 11.00 am and at the same time when a technician was pouring chemical in another machine, the respondent received certain drops of chemical in her eyes, and thereafter, she took treatment from various eye surgeons. Though the version of the appellant's witness Pramod kumar

is one of denial, but mere denial is not sufficient to rebut the evidence adduced by the respondent regarding her employment in the company of the appellant, therefore, argument on behalf of the appellant/company that the respondent was not working in their establishment is not sustainable.

6. Now the point for consideration is as to whether the respondent sustained permanent disability to the extent of 40% and whether the finding recorded by the Commissioner is not substantiated by any medical evidence.
7. True it is that no medical expert is examined to establish that the respondent suffered permanent disability to the extent of 40%. Loss of vision of one eye or two eyes is the subject of medical field and the same cannot be established through bald statement of a person who is not an expert of medical science. In absence of the opinion of medical expert, it is not established that the respondent suffered loss of vision of one eye or complete loss of vision. The Commissioner is not right in holding that it is a case of permanent loss of vision, but as she suffered injury on account of same chemical substance, loss of partial vision can be presumed. For permanent loss of vision, the Tribunal applied multiplication of 40%, but for loss of partial vision percentage of loss of earning capacity is 10% (as per Schedule I part II, item 26-A of the Act). In this way, the respondent is entitled for 1/4th of amount whatsoever awarded by the Commissioner. Now the respondent is entitled for

compensation of Rs.22,020/-. Accordingly, the substantial question is answered in affirmative.

8. I have gone the case laws cited by learned counsel for the appellant. Considering all the facts and circumstances of the case, the case laws cited by the appellant are distinguishable from the facts of the present case.
9. In view of the above award is modified and the appellant will pay compensation of Rs.22,020/- to respondent. Accordingly, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju