

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 06/09/2018

Judgment delivered on : 30/11/2018

MA No. 1493 of 1999

- Ramkumar Vishwakarma, S/o Ram Prasad Vishwakarma, R/o Chanti Dih (Goushala Kholi), Bilaspur, Distt. Bilaspur (MP)

---- Appellant

Versus

1. Luthara Corporation, through its Proprietor Shri Anil Luthara, Nehru Nagar Road, Bilaspur, Distt. Bilaspur (CG)
2. Commissioner, Workmen Compensation, Under Workmen Compensation Act-cum-Labour Court, Bilaspur (CG)

---- Respondents

For Appellant	:	Shri Anurag Verma, Advocate.
For Respondent No.1	:	Shri Preetam Tiwari, Advocate.

Hon'ble Shri Gautam Chourdiya, J

C A V Judgment

This appeal has been filed under Section 30 of the Workmen Compensation Act, 1923 against the order dated 28.5.1999 passed by Commissioner for Workmen Compensation Act, Labour Court, Bilaspur in Case No.1/WCA/97 (NF) Claim, whereby claim of the appellant/claimant has been dismissed.

02. As per averments made in the application filed by the appellant/claimant, he was working in Luthra Corporation-respondent No.1 since 1968 as Mistri. On 13.8.1996 during the course of his employment under respondent No.1 while the claimant was cutting the iron plate, a piece of iron pierced into his right eye; he was immediately taken to Luthra Nursing Home where he received treatment till 20.8.1996. In the meanwhile, the claimant also underwent CT Scan at Modern Medical Institute, Raipur and as per CT Scan report, there was blood clotting in the veins of the brain. He was again admitted in Luthra

Nursing Home on 8.9.1996 where he was treated till 11.9.1996 by Dr. SK Tiwari and ultimately, his right eye was removed as it was causing severe medical complications to the claimant. The claimant also stated that due to injury sustained by him, he suffered paralytic attack resulting in his permanent disablement and 100% loss of earning capacity. He stated that he was earning Rs.2000/- per month and on 13.8.1996 he was 44 years of age. Thus, with the above averments, he prayed for suitable compensation from respondent No.1.

03. Respondent No.1 in its written statement denied the claim of the claimant mainly on the ground that the claimant had never been in its employment. It was averred that the claimant has utterly failed to substantiate his case by oral or documentary evidence, he has nowhere stated as to who took him to hospital after the alleged accident whereas the respondent/corporation has produced the attendance register, the documents pertaining to statutory deductions from the salary of its employees etc. which go to show that the claimant had never been in the employment of the respondent/corporation and he has filed the claim petition on false and frivolous grounds, which is liable to be dismissed.

04. The Commissioner considering the evidence led by both the parties, by the impugned order dismissed the claim case on the ground that the claimant has failed to prove that he suffered injuries while he was in the employment of the respondent/corporation.

05. Learned counsel for the appellant submits that the Commissioner has committed a grave illegality in dismissing the claim case of the appellant/claimant by recording a finding that he was never

in the employment of the respondent/corporation whereas the claimant had adduced oral as well as documentary evidence to establish his case. He submits that as per document of Ex.P/4 produced by the claimant, it stands proved that he was in the employment of the respondent/corporation. He further submits that the Commissioner was also not justified in recording a finding that the claimant has not suffered 100% loss of earning capacity whereas the medical evidence adduced by him shows that in the said accident the claimant lost his right eye and looking to nature of his employment, he suffered 100% loss of earning. Therefore, the impugned order of the Commission is liable to be set aside and consequently, the claim of the appellant/claimant deserves to be allowed.

Reliance has been placed on the decision in the matter of ***Bhutabhai Angadbhai and another Vs. Gujarat Electricity Board and others, (1987) 1 GLR 617.***

06. On the other hand, learned counsel for the respondent/corporation submits that the Commissioner considering the overall evidence on record and keeping in view all relevant aspects of the matter, has rightly dismissed the claim of the claimant and as such, the order impugned needs no interference by this Court.

07. Heard learned counsel for the parties and perused the material available on record.

08. As regards the document Ex.P/1 i.e. a certificate issued by the respondent/corporation, the Commissioner has not considered the same as experience certificate of the claimant on the ground that it has

nowhere been mentioned in the said certificate that the claimant had ever worked under the respondent/corporation, it merely mentions that the claimant knows the sheet metal work very well and bears a good moral character.

09. So far as documents of Ex.P/4 are concerned, none of these documents bears seal or name of the respondent/corporation. From the said documents, it is very difficult to infer that there was any relationship of employee and employer between the claimant and the respondent/corporation or that the details contained therein relate to the work done by the claimant while being in the employment of the respondent/corporation. Even otherwise, the last document of Ex.P/4 is dated 24.2.1996 and as such, if any such relationship was there between the parties, the same was only till 24.2.1996 whereas according to the claimant the accident occurred on 13.8.1996, meaning thereby that on the date of accident the claimant was not in the employment of the respondent/corporation.

10. The respondent/corporation has filed documents Ex.D/2 to D/72 i.e. copy of the original attendance register; Ex. D/73 i.e. list of employees of the corporation and their forms regarding contribution as per Employees State Insurance Act; Exs.D/74, 75, 77, 78, 80, 81, 82, 84 to 89, 91 to 96, 98 to 103 which are copy of challans; Exs.D/76, 79, 83, 90, 97 which are Form-6; Exs.D/104 & 105 to 107 which are balance sheet of the respondent/corporation. None of the above documents bears the name of the claimant as employee of the respondent/corporation and this fact has also been admitted by the claimant in his cross-examination. However, for the establishments

governed by the provisions of Employees State Insurance Act, it is mandatory that the employees and the employer of such establishments contribute requisite amount towards ESI. Likewise, every employee has to contribute a requisite amount towards Provident Fund (PF). But there is no such document which shows that the appellant/claimant was contributing any amount towards ESI or PF.

11. As regards the judgment in the matter of *Bhutabhai Angadbhai* (supra) relied upon by counsel for the appellant, the same is of no help to the appellant as it is distinguishable on facts from the present case. In the cited as, the deceased was engaged through contractor by the principal employer whereas in the present case, as observed above, the appellant could not establish that he was under the employment of the respondent/corporation at the relevant time.

12. On the basis of aforesaid discussion, this Court is of the opinion that the appellant/claimant has miserably failed to prove his case for compensation from the respondent/corporation being his employer and as such, the Commissioner has not committed any illegality in dismissing his claim. Accordingly, the appeal being without any substance is liable to be dismissed and is hereby dismissed.

Sd/

(Gautam Chourdiya)

Judge