

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 278 of 2012**

Rakesh Agrawal S/o Shri Gulab Chandra Agrawal, aged about 27 years,
R/o Sharda Computers, N.T.P.C. Darri, Thana Darri, Tahsil Katghora,
District Korba (CG)

---- Appellant**Versus**

1. Commissioner for Employees Compensation, Labour Court, Korba (CG)
2. Chandramani Shrivastava S/o Shri Goverdhan Prasad Shrivastava, Caste Shrivastava, R/o Mudapar, House No. 340, Ward No.19, Thana Citi Kotwali, Korba, Tahsil and District Korba (CG)

---- Respondents

For Appellant	:	Shri Vinay Pandey, Advocate
For Respondent no.2	:	Shri Dashrath Kushwaha, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/02/2018**

Present is an appeal by the employer under Section 30 of the Workmen's Compensation Act. The challenge is to the award dated 04.01.2012 passed by the Commissioner for Workmen's Compensation Act, Labour Court, Korba in Case No.12//2005/W.C.Act. The challenge is also to the order dated 03.05.2012 passed in Mis. Case No.4/EC Act/12 which was a penalty proceeding where an amount of Rs.45,000/- has been imposed upon the appellant to be paid within a period of one month failing which the said amount would carry interest @ 12 % per annum.

2. Brief facts of the case are that respondent no.2 Chandramani Shrivastava filed a claim application before the Commissioner for Workmen's Compensation claiming compensation in respect of an accident that took place

on 30.10.2002. It was contended by the claimant before the Commissioner that on 30.10.2002, he was deputed by the appellant along with the younger brother of the appellant Natwar Agrawal for installation of a computer in the house of one Ramesh Nayak at Quarter No. M-67 at Deepka. While returning after completion of installation work, the claimant and Natwar Agrawal met with an accident when they were hit by an unknown Maruti car. As a result of the accident, the claimant sustained grievous injuries and Natwarlal Agrawal succumbed to the injuries sustained from the said accident. The claimant had received compound fractures on his right lower limb and the doctor has assessed the permanent disability at 42%.

3. Initially, the Commissioner for Workmen's Compensation had passed an award on 20.11.2007 whereby an amount of Rs.81,376/- was quantified as compensation and penalty of Rs.30,000/- was imposed upon the present appellant. This order dated 20.11.2007 was subjected to challenge in MAC No. 376 of 2008 and this High Court vide its order dated 09.09.2011 set aside the said award and remitted the matter back for fresh adjudication after granting liberty to the parties to lead fresh evidence if any.

4. The learned Commissioner pursuant to the matter being remanded and considering all the subsequent facts which were brought on record passed the impugned order on 04.01.2012 whereby the compensation has been quantified at Rs.90,000/- with interest @ 12%. Subsequently, a penalty proceeding was also initiated in Misc. Case No. 4/EC Act 2012 and penalty of Rs.45,000/- was also imposed against the appellant vide order dated 03.05.2012.

5. It is these two orders dated 04.01.2012 and 03.05.2012 which are under challenge in the present appeal.

6. Primary contention of Shri Pandey, counsel appearing for the appellant challenging the award is that there is absolutely no evidence to show that the claimant in the instant case was an employee of the appellant establishment. He submits that the claimant has not been able to establish by leading cogent evidence before the Commissioner the fact that he falls within the definition of Section 2 (1) (n) of the Workmen's Compensation Act. The contention of the counsel for the appellant is that in spite of ample opportunities being given to the claimant, there is no document with which the employer and employee relationship between the appellant and the claimant could be established. He submits that no documentary evidence was adduced before the Commissioner to substantiate this aspect. Thus, the finding of the Commissioner is contrary to the evidence brought on record and therefore the same deserves to be set aside.

7. Perusal of the record would reveal that the appellant was owner of a shop known as "Sharda Computers" is not in dispute. It is also not in dispute that immediately after the accident, an FIR i.e. Ex.P-3 was lodged and the contents of which have also not been disproved or denied by the appellant. Moreover, the claimant in his deposition has in very specific term stated that he was working as an operator in the shop of the present appellant and that on the date of accident i.e. on 30.10.2002 he was sent to the house of one Ramesh at Quarter No. M 67 at Deepka along with the brother of the appellant Natwar Agrawal for installation of a computer. The present appellant has not brought on record the evidence of the so called occupant of Quarter No. M-67 namely Ramesh Nayak who could have been the best person to establish the fact that the claimant herein had not been sent by the appellant for installation of computer. This having not been done by the appellant, a strong inference has to be drawn from the statement of the claimant in his favour that the

claimant was working as an operator and that he was sent for installation work by the appellant to the quarter of Shri Ramesh i.e. quarter No.M-37 at Deepka colony.

8. Given the facts and circumstances of the case, this Court is of the opinion that the finding of the learned Commissioner while passing the impugned award dated 04.01.2012 does not seem to be either contrary to the evidence or contrary to the law in any manner.

9. Now coming to the issue of imposition of penalty part, the undisputed fact from the record which comes out is that when the earlier order was passed, the Commissioner had imposed a penalty of Rs.30,000/- which stood set aside vide order dated 09.09.2011 by this High Court. However, subsequent order has been passed in a penalty proceeding on 03.05.2012 whereby the award of penalty has been raised from Rs.30,000/- to Rs.45,000/-. The reading of the award would show that no specific reason has been given for enhancement of penalty from Rs.30,000/- to Rs.45,000/-. What cannot be brushed aside is that the award was set aside by this High Court and it was remitted back for a fresh adjudication. The Commissioner ought to have considered the fact that the penalty part, unless there are specific reasons assigned, should have been the same what had already been awarded at the first instance unless strong ground has been shown by the Commissioner calling for an enhancement of penalty portion. Thus, the imposition of penalty of Rs.45,000/- does not seem to be justified and the same deserves to be and is accordingly reduced to the penalty earlier imposed at Rs.30,000/- in stead of Rs.45,000/-. The impugned order dated 03.05.2012 thus stands modified to the extent that the claimant shall be entitled for penalty of Rs.30,000/- in stead of Rs.45,000/- as assessed by the Commissioner.

10. The appeal thus stands dismissed so far as the challenge to the principle amount is concerned. But the appeal is partly allowed so far as the challenge to penalty part is concerned.

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