

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 577 of 2018**

- Mohan Yadu S/o Mukutram Yadu Aged About 28 Years R/o Village Rohra, P.S. Bhatapara (Gramin) District Balodabazar-Bhatapara, Chhattisgarh.

---- Appellant**Versus**

- Golu Yadu S/o Chotelal Yadu Aged About 18 Years R/o Village Bodri, P.S. Chakarbhata District Bilaspur, Chhattisgarh.

---- Respondent

For Appellant
For Respondent

Shri Ajay Kumar Dwivedi, Advocate.
Shri K.K. Singh, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order On Board****01/12/2018**

1. This appeal under Section 30 of the Workmen's Compensation Act, 1923 has been filed by the appellant/owner against the judgment dated 05.01.2018 passed by the Commissioner Workmen's Compensation, Labour Court, Bilaspur, District Bilaspur, C.G. in claim case no. 79/EC Act/2015 (non-fatal) whereby the Commissioner has granted compensation of Rs. 3,22,075/- in favour of the respondent with interest at the rate of 6% percent per annum from the date of accident till deposit of the said amount.
2. Brief facts of the case as per application filed by the respondent/applicant is that on 10.02.2011 while he was working under the appellant as a Labour and was cutting paddy straw in the paddy straw cutting machine, his right hand got stuck in the said machine and was cut from the wrist. At the time of accident the

respondent was 18 years of age and earning Rs.400/- per day as a Labour and due to injuries suffered by him he has become 100% disabled.

3. The appellant/non-applicant in his written statement denied all the adverse averments made in the claim petition and further denied the relationship of employee & employer between the applicant and the non-applicant. He stated that the said paddy straw machine does not belong to him, the place where the said accident occurred also does not belong to him and further he is not liable to pay any compensation to the applicant.
4. The Commissioner considering the pleadings of the respective parties and the evidence adduced them by the impugned judgment granted compensation in favour of the applicant as mentioned above.
5. Learned counsel for the appellant submits that the Tribunal has wrongly fastened the liability of paying compensation on the appellant because there is no evidence on record which could show that the respondent/applicant was under the employment of the appellant/non-applicant and he suffered the injury in an accident caused during the course of such employment under the appellant. He submits that in the given facts and circumstances of the case the claim, if any, has to be filed before the appropriate Civil Court under the law of torts.
6. On the other hand, learned counsel for the respondent/applicant supports the impugned judgment of the Commissioner and submits that as per the evidence of the applicant, the document of Ex.P-19 i.e. certificate of ownership of the paddy straw cutting machine which

shows that the said machine belongs to non-applicant Mohan Yadu and Ex.P-4 FIR lodged by the applicant against the non-applicant and Seizure Memo Ex.P-7, it is evident that the applicant was under the employment of the non-applicant and he suffered injury in an accident during the course of such employment.

7. Heard learned counsel for the parties and perused the material available on record including the impugned judgment.
8. This appeal was admitted for hearing by this Court vide order dated 29.06.2018. However, the substantial question of law was not framed at that time. Therefore, considering the pleadings of the respective parties and the evidence adduced by them, with the consent of the parties the following substantial question of law is framed for deciding the present appeal:

“Whether the judgment impugned passed by the Commissioner, Workmen's Compensation Act, 1923, Labour Court Bilaspur suffers from any illegality or perversity?”

9. The applicant Golu Yadu in para 21 of his evidence has stated that there was oral contract between the non-applicant and himself, he was under the employment of non-applicant as a Labour at the rate of Rs.400/- per day as the non-applicant was his relative. He has further stated that the paddy straw cutting machine is of the non-applicant Mohan Yadu. AW-2 Sudharu Yadav has also stated the said paddy straw cutting machine belongs to non-applicant Mohan Yadu. He in para 11 of his cross-examination has denied the suggestion that non-applicant Mohan Yadu did not ask the applicant Golu Yadu for cutting

of paddy and further volunteered that Mohan Yadu had sent applicant Golu Yadu for cutting of paddy. Thus, from the evidence of the above witnesses it stands proved that on the date of accident the applicant was under the employment of non-applicant, there is no reason to disbelieve the statement of the above witnesses.

10. As regards the ownership of the straw cutting machine, the non-applicant has denied the ownership of the said machine. However, as per Ex.P-19 i.e. certificate of ownership of the said machine, it is evident that the said machine is owned by non-applicant Mohan Yadu. Further, as per Ex.P-7 seizure memo, it is clear that non-applicant Mohan Yadu is the ownership of the said machine. As per Ex.P-4 i.e. FIR lodged by the applicant, the non-applicant Mohan Yadu has been mentioned as owner of said paddy straw cutting machine. As per Ex.P-3, charge sheet was filed against the non-applicant Mohan Yadu for the offence under Sections 287 and 338 of the IPC. Thus, from the aforesaid oral and documentary evidence, it is proved beyond doubt that the paddy straw cutting machine belongs to the non-applicant.

11. Non-applicant has stated that he has no knowledge about registration of offence against him under Sections 287 & 338 of the IPC at Police Station, Bhatapara. However, the said statement stands falsified in view of judgment dated 7.11.2017 delivered by Judicial Magistrate First Class, Bhatapara in criminal case no. S-61/14, State of Chhattisgarh Vs Mohan Yadu whereby the non-applicant has been acquitted of the charges leveled against him under Sections 287 & 338 of IPC. NAW-2 P. Ram Pal, has stated that he has no knowledge about the accident and that he never saw the applicant working under

the non-applicant.

12. In a case like the present one, strict rule of evidence cannot be insisted upon and it has to be decided on the basis of preponderance of probability. Therefore, considering the over all facts and circumstances of the case, the statements of the applicant, Sudharu Yadav AW-2, the documents of Ex.P-4 FIR, Ex.P-3 charge sheet, Ex. P-7 seizure memo, Ex.P-20 ownership certificate as well as the conduct of the non-applicant, there is no denying the fact that the applicant was under the employment of the non-applicant and he suffered injuries in an accident out of use of the vehicle attached with the paddy straw cutting machine belonging to the non-applicant during the course of such employment.

13. So far as quantum of compensation is concerned, the applicant has duly proved the injury suffered by him by examining the treating Dr. H.N. Saheta. As per Ex.P-6 i.e. injury report which has been duly proved by Dr. H.N. Saheta, it is found that the right hand of the claimant was amputated. Considering the evidence of the claimant, supported by the medical evidence, keeping in view the provisions of Section 2(1) and 4, Schedule 1, the Commissioner has held that the applicant has become 60% disabled. The Commissioner considering the documents of Ex.P-5 i.e. crime details form and Ex.P-6 i.e. injury report has assessed the age of the applicant as 18 years and in absence any proof regarding income, considering the applicant as a Skilled Labour, as per minimum wages prevalent at the relevant time, assessed his income as Rs.3,952/-. The aforesaid assessment of the Commissioner appears to be just and proper and needs no

interference by this Court. Thus, the amount of Rs.3,22,075/- with interest at the rate of 6% from the date of accident till deposit of the same, awarded by the Commissioner in favour of the claimant cannot be said to be excessive or exorbitant, rather it appears to be based on proper appreciation of the material available on record.

14. In the result, the substantial question of law framed by this Court is answered in the negative and consequently, the appeal being without any substance is hereby dismissed. The appellant shall also pay a sum of Rs.2,000/- to the respondent/applicant towards cost of litigation.

Sd/-
Gautam Chourdiya
Judge

Akhilesh