

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

430

FAO No. 2382 of 1996
Date of decision: 16.04.2018

Bir Mati and Others

...Appellants

Vs.

Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sagar Aggarwal, Advocate for the appellants.

Mr. R.S. Bains, Advocate for the respondent.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the award of the Commissioner passed under the Workmen Compensation Act, rejecting the claim filed by the appellant.

The case of the appellant was that her husband was employed by the respondent for spraying pesticides on his paddy crops. Due to inhaling of pesticides, he died. The Commissioner held that the deceased did not fall within the definition of the Workmen on the basis of Section 2(1) (n) sub clause (XXIX) of Schedule II of the Act because that only included those persons who were farming by tractors or other contrivances driven by steam or other mechanical power or by electricity.

Counsel for the appellant, however, relied upon clause

(XLIV) of the said Schedule, as per which a person who is employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations is also covered under the definition of Workmen.

Counsel for the respondent has not been able to show how clause (XLIV) is not applicable.

The second point which found favour with the Commissioner to decline the claim was that the deceased was described as 'Sanjhi' and as per the Commissioner that expression denoted partnership rather than employed. Counsel has argued that the Commissioner misconstrued the meaning of the word 'Sanjhi' and actually the word 'Sanjhi' is commonly used for a person who works for a share of the produce. As per learned counsel even a person who gets share of produce from his employer has also to be considered an employee just like an employee who gets wages in cash. Counsel for the respondent has not been able to point out any flaw in this reasoning also.

In the circumstances, the appeal is allowed. Counsel for the respondent points out that even if this appeal is to be allowed the matter has to be remanded back to the Commissioner for a decision afresh on merits. Counsel for the appellant has accepted this argument.

Consequently the matter is remitted back to the Commissioner under Employees Compensation Act, Karnal for a fresh decision on merits.

If the record has been summoned, the same be sent back to the said office. Parties through their counsel are directed to appear before the Commissioner on 21.05.2018.

Since the main case is decided, pending civil miscellaneous, if any, shall be disposed of.

April 16, 2018

Poonam (II)

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No