

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

445

**FAO No.2893 of 1996 (O&M)
Date of Decision : 23.04.2018**

Roop Chand and another

..... Appellants

Versus

Deva Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. J.S. Virk, Advocate
for the appellants.

Mr. Subhash Godara, Advocate
for Mr. S.S. Dinarpur, Advocate
for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order dated 16/5/95 passed by the Commissioner, Karnal under the Workmen's Compensation Act dismissing the claim petition filed by the appellants.

The claim of the appellants was that two of their sons were employed by the respondent and, on the fateful day when they were spraying pesticides on the sugarcane field of the respondent they fell ill on account of inhalation of pesticides. They were both taken to the hospital where one son Om Parkash died while the other brother Gurdayal was fortunately saved. Their parents claimed compensation for the death of Om

Parkash. The case of the respondent on the other hand was that actually the claimants had taken his land on lease and thus there was no relationship of employer and employee. He also relied on a statement of appellant No.1 which as per him were made by the appellant No.1 to the police wherein he had categorically admitted that he had taken the land on lease. The Commissioner dismissed the claim petition and how the appellants are before this Court.

Counsel for the appellants has argued that the Commissioner took an unduly harsh and pedantic view in coming to the conclusion that the employment was not proved. As per him there is normally no written record of any such employment.

Counsel for the respondent on the other hand has argued that the appellant No.1 had admitted in his testimony that the police had come and recorded his statement. He has further pointed out that even the brother who as per the appellants was also employed (and would have been the best witness) was not examined and nor was any other independent witness examined.

I have gone through the record and find that the arguments of the counsel for the respondent carries more weight. There is no explanation why the co-employee-brother was not produced in evidence nor any independent witness produced. At best it can be said to be a case where there are 50% chances that the appellants are correct and 50% chances that the respondent is correct. In that situation the appeal will have to fail because even in a beneficial legislation it is for the appellants to establish some preponderance of probability in their favour.

In the circumstances, the appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

April 23, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No