

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

**CM-9196-CII-2017 in/and
FAO No.5177 of 2011
Decided on : 10.05.2018**

SDO, Electrical HUDA Office, Kurukshetra and another

... Appellants

Versus

Shakuntla and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Shutanshu Goel, Advocate for
Mr. Rishabh Gupta, Advocate for the applicant-appellants.

Ms. Kiran Bala Jain, Advocate
for respondents No.4 to 7.

G.S. Sandhawalia, J. (Oral)

CM-9196-CII-2017

Application for recalling the order dated 23.03.2017 has been filed, whereby the appeal was dismissed for want of prosecution.

In view of the averments made in the application, supported by affidavit, the same is allowed. The order dated 23.03.2017 is recalled and appeal is restored to its original number and main case is taken on board today itself.

CM stands disposed of.

Main appeal

The appeal is directed against the order dated 21.02.2011, whereby a sum of ₹4,15,960/- alongwith 12% has been awarded to the legal representatives of the deceased workman, namely, Gurmail Singh by the Commissioner Employees Compensation Act, 1923.

The primary plank of the argument of the counsel for the appellants is that principal employer was one Standard Electronic Company through its proprietor with whom the workman was working and, therefore, the liability which has been fixed upon with the appellants was not justified.

The factual matrix is that on 23.08.2005 the deceased alongwith another workman, namely, Ramesh Chand had been asked by the contractor to do work deputed by the officials of the appellants. The work was for installation/earthing of the Transformer of the Electric Line at Sector-3, HUDA, Kurukshetra. The workman had suffered electric shock while he was working on the pole and fell down on the ground and become unconscious, as the electricity supply was not disconnected and received injuries and eventually died on 09.10.2005.

The Commissioner noticed that it had been admitted by the appellants that the contract had been given to the proprietor of Standard Electronic Company, for the erection of 3 numbers transformers as per the averment of the written statement itself. The document Ex.AW2/2 was taken into account to notice that the deceased was on the transformer and touched the hot wiring and got a electric current, due to which he fell down and received injuries and eventually expired. Resultantly, it was held that the appellants are the principal employer on account of which the amount was quantified under issue No.3, keeping in view the fact that he was earning ₹4,000/- per month as per the provisions of the Act and the Schedule.

The fact remains that death took place in the area which is under control of the employees of the appellant and it was their duty to ensure that the electricity had been disconnected when the workmen were carrying out work under the contractor.

In similar circumstances, in **FAO No.8447 of 2014 'Executive Engineer/Deputy General Manager, Sub-Urban Division, DHBVNL, Bhiwani and another Vs. Smt. Priyanka and others'** decided on 01.02.2017, the question of law was framed as under:-

“The question of law which is common in all the appeals is “as to whether the principal-employer is liable to pay the amount of compensation when the employee died while working under the supervision and on the premises of the principal employer and his right for indemnification.”

It is in the said case also that the deceased had been working under the directions of the contractor and got electrocuted. While placing reliance upon the provisions of Section 12, it was held that it is a beneficial piece of legislation and Sub-Section 4 provides that Section 12 would not apply when the accident occurred elsewhere then, in or about the premises on which the principal had undertaken or usually undertakes, as the case may be to execute the work. The relevant portion of the said order reads as under:-

“From the above evidence, it is apparent that the Commissioner is correct in coming to the conclusion that the contractor engaged the deceased Sunil Kumar and other employees for work of the Nigam and thereafter had rightly shifted the burden of proof upon the said contractor. Keeping in view the documentary evidence on record regarding the repair

of the work which was being taken from the contractor, it was rightly held that he was doing work and received fatal injuries during the course of employment with the contractor and the Nigam and, therefore, the fatal injuries were received in the course of his employment which resulted in his death. Section 12 reads as under:-

“12 Contracting. (1) *Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any[employee] employed in the execution of the work any compensation which he would have been liable to pay if that [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the [employee] under the employer by whom he is immediately employed.*

(2) *Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified*

by the contractor [, or any other person from whom the [employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the [employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) *Nothing in this section shall be construed as preventing a [an employee] from recovering compensation from the contractor instead of the principal.*

(4) *This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”*

A perusal of the above Section would go on to show that the same is a beneficial piece of Legislation for the employee in as much as it appears as a recourse to claim compensation from the principal employer and it is open to the principal to be indemnified from the contractor in case the work had been contracted out. The principal would accordingly be, thus, liable

to pay to any employee in the execution of the work any compensation which he would have been liable to pay if the employee had been immediately employed by him. Under sub-clause (2), his entitlement to be indemnified by the contractor is there. Sub-section (4) provides that Section 12 of the Act would not apply where the accident had occurred elsewhere than in or about the premises on which the principal had undertaken or usually undertakes, as the case may be, to execute the work. The avowed object of the said Section is to confer benefits on the employee and their legal representatives in the cases of death for their right to compensation either from the principal or from the contractor at their option. The purpose being that a contractor may be merely a man of straw and, therefore, might not be in a position as such to pay off the claims immediately and, therefore, their interests were to be protected to avoid any direct confrontation. The right of the principal to be indemnified has thus been incorporated. The interest of the principal employer has been duly safeguarded under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.”

Once the factual aspect had been recorded that the workman had been executing his work on the transformer of the appellant under the direction and supervision of its officials, the Commissioner has rightly held that the liability would be of the appellant. The right of indemnification in such cases is not liable to be granted. The findings as such which have been recorded do not suffer from any infirmity or illegality as there was a mistake on the part of the employees of HUDA itself, as the electricity supply was not disconnected when the work was

being carried out.

In such circumstances, no case is made out to interfere in the
impugned order as no substantial question of law arises and the appeal is,
accordingly, dismissed.

MAY 10, 2018
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>