

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

FAO No.3834 of 2018(O&M)

Date of decision: 7.12.2018

Gurjinder Singh and anotherAppellants

VERSUS

Jasbir Kaur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

REKHA MITTAL, J.

The present appeal directs challenge against order dated 30.04.2018 passed by the Commissioner under the Employee's Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed in respect of death of Balbir Singh @ Babbu and liability to pay compensation has been fastened against the respondents before the Commissioner including the appellants.

Counsel for the appellants would argue that it is categorical case of the claimants that the deceased Balbir Singh was an employee of Amarjit Singh (respondent No.1 in the application for compensation). The witnesses examined by the claimants have reiterated that the deceased was an employee of Amarjit Singh – respondent No.3 who used to pay him Rs.12,000/- / Rs.13,000/- per month as wages at the rate of Rs.400/- per day or more on account of over-time. Liability to pay compensation has wrongly been fastened against the appellants (respondents No.2 and 5

therein). In the alternative, it is argued that even if findings of the Commissioner imposing liability against appellants/respondents No.2 and 5 by treating them as principal, in view of the provisions of Section 12 of the Act are affirmed, the Commissioner was obligated in law to decide the issue of entitlement of the appellants to recover the amount from Amarjit Singh – respondent No.3, in terms of Section 12(2) of the Act. It is prayed that the order impugned may be set aside and the matter be remitted to the Commissioner for decision of right of recovery in favour of the appellants and against respondent No.3. In support of his contention, he has relied upon judgment of this Court **M/s Vindul Exports, Kamla Nagar, Panipat Vs. Shanti Devi and others, 2014(1) PLR 400.**

I have heard counsel for the appellants, perused the paper-book particularly the order impugned and the judgment cited at bar.

The plea of claimants (unfortunate parents of deceased Balbir Singh @ Babbu) is that Balbir Singh was doing the work of Mason under employment of respondent No.1 and on the fateful day, he was constructing building of Bhullar Rice Mill Nagla with Amarjit Singh and some other labour when the occurrence in question took place resulting in injuries to Balbir Singh and other labourers on account of wall having collapsed.

The claim application was contested by the respondents including Amarjit and appellants by filing a joint written statement and they denied that occurrence in question took place in the manner set-forth by the claimants.

Section 12 of the Act, relevant in the present context, reads as follows:-

“Contracting- 1. Where any person (hereinafter in this section referred to as the principal) in the course of or for the purpose 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 workman employed in the execution of the work any compensation which he would have been liable to pay if that workman 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 workman 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 workman 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 workman 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 workman 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.”

Sub Section (2) of Section 12 of the Act says that where principal is employer and is liable to pay compensation under provision of the Act, he shall be entitled to be indemnified by the contractor or any other person from whom workman could have recovered compensation and in case 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 relation of a contractor from whom the workman 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.

The claimants have established that the deceased was working under the employment of Amarjit Singh – respondent No.3 and his services were provided to the appellants for raising construction of wall of Bhullar Rice Mill Nagla of which appellant No.1 is admittedly the partner. That being so, no error much less illegality can be found in the order impugned imposing liability upon the appellants as well, to pay compensation for the death of Balbir Singh. Since the appellants never raised an issue that they are entitled to be indemnified by Sh. Amarjit Singh – respondent No.3 rather joined hands with Sh. Amarjit Singh to contest plea of the claimants for compensation, there was no occasion with the Commissioner to decide the question of indemnification of the appellants by Sh. Amarjit Singh, in the given circumstances of the case. In this view of the matter, the appellants cannot derive any advantage to their contention from the judgment in **M/s Vindul Exports' case** (supra).

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

DECEMBER 7, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no