

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.635 of 2012

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Brij Mohan Das @ Baijnath Mohan Das, Son of Damodar Das Agrawal @
Late Girdhar Das, partner-M/s Baba Glass & Crockerries House, Ashok
Rajpath, Police Station- Pirbahore, Patna-800004.

... .. Appellant/s

Versus

Kiran Devi, wife of Late Jawahar Lal, resident of Bakarganj, Makhaniya Gali,
Opposite B.N. College, Ashok Rajpath, Patna-4.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Alok Kumar Sinha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 11-09-2019

Heard the parties.

2. This appeal has been filed under Section 30(1)(a) of the Workmens Compensation Act, 1923 for setting aside the order dated 20.06.2012 passed in W.C. Case No. 19/2008(C) by the Deputy Labour Commissioner cum commissioner of Workmens compensation, Patna by which Commissioner for workmens compensation has allowed the claim of respondent/applicant for grant of workmen compensation and has ordered the appellant/opposite party to pay Rs. 2,49,400/- as compensation to respondent/applicant failing which the same has been ordered to be recovered with 12% simple interest from the date of death i.e. 26.03.2008 till the date of recovery.

3. Briefly stated, the facts of the case is that on



26.12.2008 a claim application under Section 10(1) of the W.C. Act was filed by the respondent/applicant before the Workmen Compensation Commissioner, Patna stating therein that Late Jawahar Lal was the husband of claimant and he was an employee in the shop namely, Baba Glass and crockery house, Patna since 1971 from the age of 22 years and was paid Rs. 4000/- per month as wages.

4. On 14.03.2008 the claimant's husband Jawahar Lal was going to the bank for the work of the shop and met an road accident and sustained serious injuries and died on 26.03.2008 at PMCH during treatment. She received Rs. 5000/- for treatment and Rs. 40,000/- as fixed deposit from the employer.

5. Claim of Rs. 3 lacs was made as compensation against the appellant which was registered as W.C. Case No. 19/2008 (C) by the Deputy Labour Commissioner cum Commissioner for workmen's compensation, Patna.

6. It is submitted that notices were issued to the appellant but no show cause was filed and case was decided ex parte.

7. From the perusal of order it appears that a Vakalatnama was filed on behalf of appellant on 28.09.2010 and counsel for the appellant appeared and prayed one months time



to file show cause and as such the case was adjourned till 26.10.2010 for filing of show cause on behalf of appellant but on subsequent dates neither counsel for the appellant appeared nor any show cause was filed on his behalf and case was fixed on 03.05.2011 for ex parte hearing.

8. Respondent/claimant was examined on 24.05.2011 and thereafter case was adjourned for 05.07.2011 for further evidence and thereafter on 08.11.2011 two witnesses were examined on behalf of claimant/respondent and thereafter evidence was closed and case was fixed for argument and written argument was submitted by the claimant/respondent.

9. The trial court on the basis of material and evidence on record found that husband of claimant was employed in the firm of appellant on 01.10.1971 and on 14.03.2008 while on duty died in a road accident due to brain hemorrhage in PMCH on 26.03.2008 during treatment. His monthly salary was Rs. 4000/- and in support of claim that deceased was a workman in the firm, his service card was produced, upon which signature of employer and supervisor were present and all the witnesses examined on behalf of claimant have stated that deceased Jawahar Lal was employed in firm of appellant for last many years and on the fateful day after depositing the shops money in



the bank he was returning to the shop when one motorcycle dashed against him and he was seriously injured and he was brought to the shop and at the behest of shop owner he was admitted in PMCH where he died on 26.03.2008.

10. It is submitted on behalf of appellant that pursuant to notice issued to him he appeared before the Workmen Compensation Commissioner through his lawyer but unfortunately his lawyer did not pursue the matter and also did not attend the proceeding as such matter was decided ex parte against him.

11. It is submitted that Late Jawahar Lal was an employee of appellant and he was a serious worker and on 14.03.2008 when he was working in the shop as a sales man he suddenly fell and become unconscious and appellant with other employees immediately attended and took him to PMCH for treatment where it was found that he has suffered brain hemorrhage and died on 26.03.2008 during treatment. Appellant paid the cost of treatment and also fixed deposit Rs. 20,000/- in the name of his daughter, namely, Preeti Kumari on 08.05.2008.

12. It is further submitted that on 14.03.2008 deceased Jawahar Lal had not met any road accident and it is out an out in correct and false contention on part of respondent. The death of



deceased Jawahar Lal cannot be said to have occurred on account of any accident or arising out of and in course of his employment.

13. Respondent did not produce any cogent documentary evidence to establish that on 14.03.2008 while going to the bank for the work of the appellant deceased met with a road accident which led to his brain hemorrhage and as a result of which he died on 26.03.2008. Claim was not supported by any documentary evidence and same was allowed mere on oral evidence and no evidence was produced to establish it to be a case of road accident.

14. The observation of the learned Labour Court that since the appellant had appeared in the case through an Advocate it must be presumed that appellant had accepted to pay the compensation is totally erroneous and untenable.

15. After hearing the counsel for the parties as well as perusing the materials available on record and ex parte order passed by the Deputy Commissioner-Cum-Workmens Compensation Commissioner and in view of the facts that for fault of lawyer litigant should not suffer and cases should be decided on merit, the ex parte order is set aside and the matter is remitted to the Deputy Commissioner-cum-workmen



compensation Commissioner, Patna Division, Patna and who shall grant reasonable time to the appellant to file the show cause and thereafter decide the claim of claimant/respondent after giving opportunities to both sides for examination and cross-examination of witnesses and to produce documentary evidence in support of their case and to decide the claim of claimant/respondent within six months from the date of receipt/production of a copy of the order passed by this Court. The compensation amount of Rs. 2,49,400/- shall remain deposited with the workmen compensation Commissioner till passing of the final order by him.

16. The miscellaneous appeal is disposed of.

17. Let LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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