

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 967 of 2014

- Vinar Plastic Industries VIP Tirha, Post- Telibandha, Tah. And Distt. Raipur C.G., Through Its Director, Vijay Kumar Himani, R/o Telibandha, VIP Tirha, Tah. And Distt. Raipur C.G.

---- Appellant

Versus

1. Smt. Mantura Bai W/o Bhaiya Lal Gwale Aged About 65 Years
2. Smt. Tulsan W/o Lalchand Gwale Aged About 35 Years
3. Vinod S/o Late Lalchand Gwale Aged About 18 Years
4. Vinit S/o Late Lalchand Gwale Aged About 15 Years Minor,
5. Sarita D/o Late Lalchand Gwale Aged About 15 Years Minor,

Respondents Nos. 4 & 5 are minor through mother Smt. Tulsan Wd/o Lalchand Gwalre, All resident of Village Kanjai, Distt. Balaghat (MP)

6. The Oriental Insurance Co. Ltd., Madina Building, Kachahari Chowk, Jail Road, Raipur, Through Divisional Manager.

---- Respondents

For Appellant	:	Shri NK Vyas, Advocate.
For Respondent Nos. 1 to 5	:	Shri SK Dewangan, Advocate
For Respondent No.6	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

13/03/2019

This appeal is by the employer under Section 30 of the Employees Compensation Act, 1923 against the judgment dated 22.7.2014 passed by Commissioner, Workmen's Compensation Act-cum-Labour Court No.1, Raipur in Case No.49/WC Act/2011/Fatal, awarding compensation of Rs.3,69,642/- with interest @ 12% per

annum from 7.1.2010, fastening liability on non-applicant No.1/employer-appellant herein to deposit the said amount within two months from the date of judgment with the Court.

02. As per averments in the claim petition, Lalchand Gwale (deceased) was working as a Hamal and Watchman under non-applicant No.1-Vinar Plastic Industries. Non-applicant No.1 had also provided a room at the second floor of the factory to Lalchand Gwale for the purpose of residence. On 6.12.2009 at around 8 pm the deceased had gone to the terrace of the factory for discharging the duties of Watchman. However, due to darkness, he slipped and fell down from the terrace and died.

03. On claim petition being filed by the claimants, mother, wife & children of the deceased, under Section 22 of the Workmen's Compensation Act, 1923 (in short "the Act"), the Commissioner considering the evidence led by the parties passed the impugned judgment as mentioned above.

04. Learned counsel for the appellant/employer submits that the findings of the Commissioner that the deceased was under the employment of non-applicant No.1/appellant and his death occurred during the course of his employment, have not been challenged by the insurance company. He submits that the Commissioner was not justified in exonerating the insurance company only on the ground that as per Ex.D/2 i.e. insurance policy, the risk of only those employees was covered under the policy who were engaged in manufacturing of plastic goods and since the deceased, at the time of accident, was working as a Watchman, his risk was not covered under the policy. He submits that on the date of accident, the deceased was working as Watchman on the instructions of the employer and as per Section 2(dd) of the Act, he was working under the employment of non-applicant No.1/appellant herein and being engaged in the work incidental to or connected with the manufacturing process of plastic goods, his risk was very much covered under the insurance policy Ex.D/2.

05. On the other hand, learned counsel for the respondent/insurance

company supports the impugned judgment and submits that the Commissioner by proper appreciation of the evidence on record and the provisions of the Act, has rightly exonerated the insurance company of its liability and therefore, the same needs no interference by this Court.

06. Learned counsel appearing for the respondents/claimants have duly assisted the Court.

07. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

08. Heard learned counsel for the parties and perused the material available on record.

09. It is not in dispute that the deceased was under the employment of non-applicant No.1/appellant as a Hamal and sometimes he used to discharge the duties of Watchman whenever the Watchman was not available. Even otherwise, wife of the deceased AW-1 Smt. Tulshan Bai and his son AW-3 Vinod Ogare have also stated that the deceased was working as Hamal and Watchman under the employment of non-applicant No.1 and his death occurred in an accident arising out of and during the course of such employment. They have stated that the deceased was provided a room in the second floor of the factory by non-applicant No.1 for the purpose of residence and when he had gone to the terrace for keeping guard, he slipped and fell down on the floor from the terrace and died. This apart, non-applicant No.1 Vijay Kumar Hemani (NAW-1) has also admitted in his evidence that on the date of accident, the deceased was in the second floor of the factory, he was provided a room there for residence, however, as he slipped, he fell down from there, suffered grievous injuries and succumbed to the same while being taken to hospital for treatment. Though non-applicant No.1 has further stated that the date of accident being holiday, the deceased was not working in his factory but the said statement does not inspire confidence because in his written statement, the employer has admitted that the deceased used to do the work of watchman in absence of regular watchman and if on the

date of accident, the deceased was not working as a watchman, then the employer ought to have examined the person doing the said duty of watchman but he has not examined any such person. Therefore, considering the overall evidence available on record, it stands proved beyond doubt that the deceased died in an accident arising out of and during the course of his employment under non-applicant No.1.

10. As for the issue of liability, as per Ex.D/2 i.e. insurance policy, it covers the risk of those employees who were engaged in manufacturing of plastic goods. The Commissioner has exonerated the insurance company on the ground that the deceased at the time of accident was not engaged in the manufacturing process of plastic goods as he was on watchman duty. From the evidence of non-applicant No.1/employer, it is clear that the deceased was a Hamal in his factory and also used to do the work of Watchman whenever needed as per instructions of the employer. Section 2(1) (dd) of the Act and Schedule II thereunder read as under:

“2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context, -

xxxx xxxx xxxx

.....

(dd) "employee" means a person, who is--

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether

such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependents or any of them;]

SCHEDULE II

[See [section 2(1)(dd)]]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF [SECTION 2(1)(DD)], ARE INCLUDED IN THE DEFINITION OF [EMPLOYEES]

The following persons are [employees] within the meaning of [section 2(1)(dd)] and subject to the provisions of that section, that is to say, any person who is--

[(i) [employed in railways], in connection with the operation [,repair] or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) employed, [***], in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made [whether or not employment in any such work is within such premises or precincts], and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises [***] [***]

[Explanation.--For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within

such premises or precincts; or]

11. Thus, considering the evidence of the claimants and NAW-1 Vijay Kumar Herani as also admission of NAW-1 that the deceased was working under his employment as a Hamal and sometimes used to do the work of Watchman whenever Watchman is not available, as observed above that on the date of accident also the deceased was working as Watchman and during the course of his employment as such fell from the terrace and died, keeping in view the definition of “employee” as mentioned in Section 2(1)(dd) of the Act read with Schedule II thereunder, this Court is of the opinion that the Commissioner was not justified in exonerating the insurance company on the ground that as per Ex.D/2 i.e. insurance policy, the risk of only those employees was covered under the policy who were engaged in manufacturing of plastic goods and since the deceased, at the time of accident, was working as a Watchman, his risk was not covered under the policy. Since on the date of accident the deceased was working as Watchman on the instructions of the employer and as per Section 2(dd) of the Act and Schedule-II thereunder, his work was incidental to or connected with the manufacturing process of plastic goods, his risk was also covered under the insurance policy Ex.D/2.

12. In the result, the appeal is allowed and the substantial question of law is answered in the negative. The finding of the Commissioner in the impugned judgment exonerating the insurance company of its liability is hereby set aside and consequently, the insurance company/non-applicant No.2 is directed to indemnify the employer/non-applicant No.1 by paying compensation to the claimants as awarded by the Commissioner. If any amount has been deposited by the employer and has already been paid to the claimants, he has the right to recover the same from the insurance company.

Sd/

(Gautam Chourdiya)

Judge