

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25.07.2019

Judgment delivered on 19.12.2019

MAC No. 1024 of 2012

1. Smt. Kriti Mishra, aged about 28 years, W/o Late Abhisek Mishra, R/o Janta Aata Chakki, Pratapganj Para, Jagdalpur, P.S. City Kotwali, Jagdalpur, Bastar (CG).

Presently B-42, Indira Vihar Colony, SECL Bilaspur (CG), PS Sarkanda, Pin 495006, (CG).

2. Shakti Mishra, aged about 59 years, W/o Shri Jagdish Mishra, R/o Janta Aata Chakki, Pratapganj Para, Jagdalpur, PS City Kotwali, District Bastar, (CG).

3. Jagdish Prasad Mishra, aged about 59 years, S/o Late Chintamani R/o Janta Aata Chakki, Pratapganj Para, P.S. City Kotwali, Jagdalpur, District : Bastar, (CG).

--- Appellants

Versus

Chief General Manager, South Eastern Coalfields Limited Chirimiri, District Korla (CG).

--- Respondent

For Appellants	-	Shri Gary Mukhopadhyay, Advocate
For Respondent	-	Shri Sudeep Agrawal, Advocate

Hon'ble (Smt.) Justice Vimla Singh Kapoor

CAV Order

This appeal arises out of the award dated 30.05.2012 passed by Commissioner Workmen's Compensation, Labour Court, Jagdalpur (for short "the Commissioner") in Case No.B/51/WC ACT/2010 FATAL, awarding a compensation of Rs. 4,15,860/- in favour of the claimants.

2. Facts of the case in brief are that deceased Abhishek Mishra – husband of appellant No.1 and son of appellants No.2 and 3 was employed as Management Trainee, Grade E-1 in Anjan Hill underground mine of Chirimiri Area of South Eastern Coalfields Limited, and on 06.05.2010 while

he was working in the said mine, the accident in question occurred where he lost his life during the course of employment. On 18.06.2010 i.e. about one and a half month after the accident, the respondent deposited an amount of Rs.4,15,960/- before the Commissioner Employees Compensation, Ambikapur to be paid to the claimants. Thereafter, on 16.12.2010 the appellants filed an application before the Commissioner Employees Compensation, Jagdalpur for a direction to the respondent for making payment of compensation with interest and penalty as per the provisions of the Employees Compensation Act, 1923.

3. Learned Commissioner after hearing the parties determined the compensation at Rs.4,15,860/- by impugned award dated 30.05.2012. While awarding the said compensation learned Commissioner also observed that as the respondent had already deposited Rs.4,15,960/- on 18.06.2010 payable to the claimants as compensation, it was no more required to pay any interest or penalty as claimed by the claimants. Being dissatisfied with the award impugned, this appeal has been preferred by the claimants.

4. Counsel for the appellants submits that the Commissioner, Employees Compensation, committed a grave error in relying upon the provisions of Workmen's Compensation Act, 1923 which had been deleted with effect from 18.01.2010. It is submitted that the Workmen's Compensation Act, 1923 was amended and Employees Compensation Act, 1923 came into force with effect from 18.01.2010. He submits that as a result of this amendment, the Explanation II of Section 4 (1) of Workmen's Compensation Act, 1923 was omitted. According to the counsel for the appellants, the date of accident is very crucial for adjudication of the present case and it is a settled legal position that under the Employees Compensation Act the compensation falls due from the date of accident. Counsel for the appellants placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Oriental**

Insurance Company Limited Vs. Siby George and others reported in **(2012) 12 SCC 540**. He submits that when the law on the point is settled with respect to the compensation becoming due on the date of accident, then the Commissioner Employees Compensation should have adhered to the same and determined the compensation as per the legal position existing on the date of accident i.e. on 06.05.2010. He pointed out that on the date of accident Explanation – II of Section 4 (1) of the Workmen's Compensation Act, 1923 was not in existence at all consequent to its omission with effect from 18.01.2010 and therefore, the Commissioner has committed a grave legal error in making the same its basis for proceeding with the computation of compensation awardable to the claimants.

5. On the other hand, counsel for the respondent submits that the impugned award dated 30.05.2012 passed by learned Commissioner is strictly in accordance with law and does not require any alteration therewith. He submits that the Explanation-II of Section 4 (1) (a) puts a cap on the outer limit of compensation hence any reading of the main part excluding the Explanation-II is not permissible. According to him, the explanation being part and parcel of the enactment cannot be read in isolation. In support of the arguments advanced by counsel for the respondent, the reliance is placed on the decisions of Supreme Court in the matter of **Sundaram Pillai Vs. Pattabiraman**, reported in **(1985) 1 SCC 591** and that of **State of Punjab and others Vs. Bhajan Kaur and others**, reported in **(2008) 12 SCC 112**.

6. Heard counsel for the parties and perused the documents on record including the award under challenge in this appeal.

7. First of all, this Court thinks it proper to reproduce certain provisions of the Workmen's Compensation Act, 1923 existing then, as under:-

“4(1)(a) Where death results from the injury : an amount equal to [fifty percent] of the monthly wages of the deceased workman multiplied by the relevant factor

with effect from 18.01.2010 limiting the monthly wages of the deceased employee to Rs.4000, the earlier legislation stating thus would cease to operate as in this case the death of the employee giving rise to cause of action to the claimants to seek compensation had taken place on 06.05.2010 i.e. much after the amendment incorporated in the official gazette with effect from 18.01.2010. In these circumstances, this Court finds substance in the argument of the counsel for the appellants that consequent to deletion of Explanation-II to Section 4(1) (a) of the Act of 1923 putting a cap on the outer limit of monthly income of the deceased employee to Rs.4000, with effect from 18.01.2010 i.e. much prior to the accident in question, the monthly wages of the deceased employee has to be treated as per the Section 4 (1) (a) which prescribes "an amount equal to [fifty percent] of the monthly wages of the deceased employee" which in this case has been shown to be Rs.31,619.19, "multiplied by the relevant factor", which in this case has been taken by the Commissioner to be 207.93. Thus the average income of the deceased employee taken by the Commissioner as Rs.4000 while computing the compensation awardable to the claimants as Rs.4,15,860/- is not in accordance with the legal position holding the ground on the date of accident. As regards the finding with respect to the age of the deceased employee and the dependency of appellants No.2 and 3 on him as arrived at by the Commissioner, being in consonance with the material on record is held to be just and proper.

10. In aforesaid view of the matter, the award impugned being in contravention of the provisions of law cannot be allowed to stand and it is hereby set aside remanding the case to the Commissioner, Employees Compensation, Jagdalpur with a direction to decide it afresh after hearing both the parties to the issue. The claim between the parties including interest and penalty is directed to be determined by the Commissioner strictly in

accordance with law and that too as expeditiously as possible preferably within a period of four months from the first date of listing before it.

11. Appeal is thus allowed with observations made above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Ajay