

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

FAO No. 1223 of 2019(O&M)

Date of decision: 15.2.2019

Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVN) and others
.....Appellants

VERSUS

Sushila and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.D. Bawa, Advocate and
Mr. Randhir Bawa and Mr. Samuel Gill, Advocate
for the appellants.

REKHA MITTAL, J.(Oral)

The present appeal directs challenge against order dated 25.06.2018 passed by the Commissioner under the Employees' Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed on account of death of Mohit in the course of employment as he got electrocuted.

Counsel for the appellants would argue that as Mohit was employed by Sudhir, Contractor – respondent No.3, Uttar Haryana Bijli Vitran Nigam Ltd. (in short 'Nigam') cannot be held liable to pay compensation. In the alternative, it is argued that even if the Nigam is held liable to pay compensation by invoking Section 12 of the Act, the Commissioner should have decided the question of entitlement of Nigam to recover the amount from the Contractor under Section 12(2) of the Act.

Be that as it may, counsel for the appellants has not disputed that neither in the reply nor during the course of hearing, the appellants pressed their claim for recovering the amount of compensation from the Contractor after payment thereof to the claimants. However, it has been argued by counsel that in the light of Section 12 of the Act, it is an obligation of the Commissioner to decide the said issue once it has been held that the deceased was an employee of the Contractor and services of the Contractor were availed by the Nigam. In support of his contention, he has referred to Division Bench judgment of the Himachal Pradesh High Court **H.P. State Forest Corporation Ltd. Vs. Vimla Devi, 2004(4) SCT 967.**

The contention raised by counsel for the appellant with regard to Nigam being not liable to pay compensation is not meritorious and liable to be rejected when examined in the light of factual controversy involved and legal position under Section 12 of the Act. In this view of the matter, liability to pay compensation has rightly been fastened upon the Nigam as well.

So far as plea of the appellants that they should be allowed recovery right against respondent No.3 - Contractor who had engaged Mohit son of Ramesh, the appeal stands disposed of but with liberty to the appellants to file an appropriate application before the Commissioner for deciding the aforesaid question. In case such an application is filed, the same shall be decided by the authority concerned on merits, in accordance with law.

FEBRUARY 15, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no