

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

FAO No.7135 of 2015(O&M)

Date of decision: 8.1.2019

M/s Kamal Bhatta Company

.....Appellant

VERSUS

Santosh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Amrita Nagpal, Advocate for the appellant.

Mr. Sanjay Verma, Advocate for respondents No.1 and 3 to 6.

REKHA MITTAL, J.

The present appeal directs challenge against order dated 14.08.2015 passed by the Commissioner under Employees' Compensation Act, 1923 (in short 'the Act') whereby compensation has been assessed to the tune of Rs.7,68,560/- payable with interest at the rate of 12% per annum from 18.04.2013 up to the date of actual payment under Section 4A(3)(a) of the Act.

The facts relevant for disposal of present appeal are that Santosh and others submitted an application for grant of compensation on the premise that Sh. Hans Raj (since deceased) was employed as a labourer on daily wages at the rate of Rs.350/- per day with M/s Kamal Bhatta Company, Kati Kheri Atali, District Mahendergarh. On 18.04.2013, while Sh. Hans Raj was performing his duties, he met with an accident and received burn injuries and died.

The appellant/respondent denied that Sh. Hans Raj was an employee of M/s Kamal Bhatta Company or he sustained injuries in the course of employment.

The Commissioner framed following issues for determination:-

1. Whether the relationship of employer and employee exists between the respondent and the deceased?
2. Whether the accident occurred out of and in the course of employment?
3. Whether the applicants are entitled to the amount of compensation, as claimed? If so, to what amount and from whom?
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, issues No.1 and 2 were jointly decided in favour of the respondents and against the appellant and accordingly while deciding issue No.3 the respondents were held entitled to compensation along with interest, noticed hereinbefore.

Counsel for the appellant has assailed the impugned order on few counts. It is argued that the respondents failed to adduce cogent and convincing evidence to establish their plea that there existed relationship of employer and employee between Sh. Hans Raj and M/s Kamal Bhatta Company. It is argued that neither Smt. Santosh Devi nor her husband Sh. Hans Raj was employee of appellant. The appellant examined Ami Lal Yadav RW-1, one of the partners of M/s Kamal Bhatta Company and he

produced copy of accounts register Ex.RW-1/A (pages 1 to 5) wherein there is no reference to payment made to Santosh or Hans Raj. It is further argued that had it been true that Hans Raj sustained burn injuries at the premises of the Bhatta, the police must have visited the Bhatta on the basis of report lodged in respect of alleged occurrence.

Another submission made by counsel is that in the ration card Ex.PA4 on the first page, the number of members of family of Hans Raj is stated to be five i.e. two adults, two children and one infant but on the second page, there is reference to seven persons sufficient to show that the respondents have based their claim on the basis of manipulated documents. It is further argued that the Commissioner has assessed compensation by applying relevant factor on the basis of his (Hans Raj) age to be 37 years but as per voter card Ex.PAB produced by the claimants, the deceased was 30 years old as on 01.01.2002 and accordingly he was more than 41 years old at the time of occurrence in April 2013 and accordingly a factor of 181.37 is to be applied for computing compensation, in case the claimants are held entitle to compensation.

Counsel representing the claimants/respondents has supported the impugned order with the submissions that findings of the Commissioner on issues No.1 and 2 are based upon detailed and correct appreciation of materials on record. It is further argued that the appellant did not produce the register of employees of Bhatta, therefore, the appellant has withheld the best documentary evidence in its possession and an adverse inference is liable to be drawn. It is further argued that Ami Lal Yadav in his cross examination has admitted that there are 80-90 persons working at the Bhatta but he has produced the accounts register only in

respect of five persons to whom certain payments were made being the potters (ghumiars).

I have heard counsel for the parties, perused the paper-book and records.

To prove relationship of employee and employer, Smt. Santosh - claimant and widow of the deceased appeared in the witness box and reiterated her stand that Sh. Hans Raj was working as a labourer with the appellant. The claimants examined Vinod Kumar, MHC P.S. Ateri to prove report(s) regarding information that Hans Raj died due to burn injuries on Bhatta. Ram Kumar, a co-employee of Hans Raj was examined as PW-3. Though in the opening lines of his cross examination, he has deposed that he had gone from his house for working on Bhatta in November 2013 and had been working on Bhatta from November 2013 to May 2014 but in the later part of his cross examination, he had stated that his Jija (brother in law) and Jiji (sister) were working on the Bhatta.

A relevant extract from his cross examination in Hindi but translated in English reads as follows:-

“It is correct that the occurrence took place while preparing tea. My Jija Hans Raj used to do the work of filling bricks at Bhatta. It is correct that we were residing at the Bhatta. It is correct that I had witnessed the entire occurrence. When I reached, my Jija was in unconscious state. It is correct that the occurrence had already taken place before we reached. When I went, at that time, there was fire on his clothes. I put cloth over him when I went close to him. It is wrong that somebody put my brother in law on fire due to animosity.

There was fault of nobody in this incident. It is wrong that I am deposing falsely. It is wrong that somebody is responsible for this incident. I have not seen the bottle of oil falling from phatta. It is incorrect that I am deposing falsely.”

The aforesaid extract from testimony of Ram Kumar is more than sufficient to establish that Hans Raj sustained burn injuries while he was an employee of the appellant- Bhatta. As has rightly been argued by counsel for the respondents, the appellant did not produce the relevant registers recording names of employees of Bhatta, their attendance and payment of wages etc. The document Ex.RW1/A, by no stretch of imagination, can be construed in favour of the appellant much less to rebut case of the respondents. In this view of the matter, no error much less illegality can be noticed in findings on issues No.1 and 2 and accordingly the same are affirmed.

The claimants produced ration card of the deceased. There appears to be some discrepancy in the first and second page of the ration card. However, since no dispute was raised by the appellant that claimants are the widow, children and father of late Sh. Hans Raj, any such discrepancy in the ration card is inconsequential.

The Commissioner has assessed compensation by considering monthly salary at Rs.8000/- and applied factor on the basis of age of 37 years. The claimants produced election card of the deceased according to which the deceased was 30 years old as on 01.01.2002, therefore, he was more than 41 years old at the time of occurrence. Counsel for the respondents has not disputed that in view of age of the deceased to be 41

years, a factor of 181.37 is to be applied. Accordingly, compensation payable to the claimants is calculated at Rs. 7,25,480/- (Rs.8000/- x 181.37 x 50%). The compensation awarded by the Commissioner is reduced to the extent of Rs.43,080/- (Rs.7,68,560/- - Rs.7,25,480/-).

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The claimants/respondents shall be entitle to compensation of Rs.7,25,480/- with interest at the rate of 12% per annum in terms of the impugned order. The parties are left to bear their own costs.

JANUARY 8, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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