

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 79 of 2014

Ganesh Vishwas S/o Late G. R. Vishwas Aged About 50 Years, R/o Mig-1/999, Housing Board, Industrial Area, Bhilai, P.S. Jamul, P.O. Jamul Cement Works, Housing Board, Bhilai, Distt. Durg C.G.

----Appellant/Non-applicant

Versus

1. Sundar Lal Sahu S/o Bishru Ram Sahu Aged About 45 Years.
2. Sohan Sahu @ Sonu S/o Sundar Lal Sahu Aged About 22.
3. Jyoti Kumari Sahu D/o Sundar Lal Sahu Aged About 12 Years.
4. Sunil Sahu S/o Sundar Lal Sahu Aged About 9 Years.

Respondents No.3 & 4 are minor through their natural guardian, father Mr. Sundar Lal Sahu. All are R/o J.P. Chowk, Shardapara, Camp-2, P.S. Chhawani, P.O. Jawahar Market, Bhilai, Distt. Durg C.G.

--- Respondents

For Appellant	: Mr. Vipin Tiwari, Advocate.
For Respondents	: None.

Hon'ble Shri P. R. Ramachandra Menon, CJ

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Parth Prateem Sahu, J

27/08/2020

1. Appellant has filed this appeal under Section 30 of the Employee's Compensation Act, 1923 (earlier Workmen's Compensation Act, 1906) (for short 'the Act of 1923') challenging the impugned judgment/ award dated 06.11.2013 passed by the learned Commissioner for Employees Compensation - cum - Labour Court, Durg, (CG) in Claim Case No.17/W.C.ACT/F/2010, whereby the Commissioner partly allowed application filed under Section 22 of the Act of 1923 and awarded Rs.2,42,970 as compensation to applicants/claimants.

2. Facts relevant for disposal of this appeal are that on 07.02.2009 Smt. Ahilya Bai was doing the work of repairing/renovation in the house of Non-

applicant and on account of fall of slab & beam, she received injuries and died on spot.

3. On account of accidental death of Ahilya Bai during the course of employment/work, claimants, who are husband & children of deceased, filed an application under Section 22 of the Act of 1923 before the Commissioner seeking compensation of 4,00,000/- pleadings therein that on the date of accident, Ahilya Bai was working as 'labourer' and thereby earning Rs.100/- per day.

4. Non-applicant/owner of house, submitted reply to application pleadings therein that there was no relationship of employee and employer between deceased and non-applicant. Applicant No.1 was a contractor, hence, liability to satisfy the amount of compensation is upon contractor. Police registered criminal case against applicant No.1. He prays for dismissal of claim application.

5. On appreciation of pleadings and evidence placed on record by the respective parties, the learned Commissioner held that non-applicant failed to prove, by placing admissible piece of documentary evidence on record that deceased was working under the contractorship of applicant No.1 only. Deceased met with fatal accident while working in the house of non-applicant, being so he was principal employer, there was relationship of employee and employer between non-applicant and deceased.

6. Learned counsel for the appellant submits that during the course of investigation, police found that applicant No.1 was Contractor under whom deceased -Ahilya Bai was working and met with an accident. Case was registered against applicant No.1 for offence under Section 304 (A) of India Penal Code and after conclusion of trial, he was acquitted of the charges by

extending benefit of doubt, which clearly shows that deceased was working under the direction/employment of applicant No.1 only and not under non-applicant/appellant -herein. He further submits that prima facie it is clear that there was no relationship of employee and employer between the deceased and appellant, hence, liability under the Act of 1923 to satisfy the amount of compensation of appellant does not arise.

7. We have heard learned counsel for the appellant and perused the record.

8. On 22.06.2015 this appeal was admitted for consideration on following substantial question of law :-

“1. Whether the learned Commissioner is correct to hold liability upon the appellant, without any evidence regarding the relation of employer and employee between the appellant and the deceased -Smt. Ahilya Bai ?’

2. Whether the learned Commissioner is correct to hold that the respondent No.1 was dependent of his wife whereas the police has accused him; offence under Section 304 -A and the learned Judicial Magistrate Class -I has acquitted him on the ground of benefit of doubt ?”

9. So far as first question of law is concerned, we have gone through the pleadings and evidence available on record. In application, it was pleaded that on the date of accident, deceased was working in the house of appellant as daily wager and accident took place while repairing/renovation of house was going on. In reply, appellant has also denied the fact of relationship of employer and employee between them. Claimants have examined applicant No.1 as AW-1, who in his evidence has stated that his wife Ahilya Bai died due to accidental injuries suffered by her while working in the house of appellant. In cross-examination, he stated that he does not take contract and also denied the

suggestion that he took the work of repairing/renovation of the house of non-applicant/appellant on contract. He also stated in his evidence that when police asked him to furnish surety for his release, then only he came to know that he has been stated to be a contractor, for which, he filed an application as Ex.P-7 for deletion of his name to the higher authorities. In view of above, no evidence has come on record to accept the submission made by the learned counsel for the appellant that there is no relationship of employer and employee between the appellant and deceased. Appellant did not enter into the witness box even after taking several dates from 16.02.2012 to 09.10.2013, therefore, right to lead evidence of appellant has been closed. When once ownership of the house/accommodation where accident took place is not in dispute and the work is for repair or renovation of the house of appellant, we find it difficult to accept the submission made by the learned counsel for the appellant that there was no relationship of employer and employee between the appellant and deceased. Appellant has also not placed on record any documentary evidence to show that he has given the work for repairing/renovation of his house to respondent No.1 on contract. Even if the appellant could have proved that the work was given by him on contract to applicant No.1 then also under the provisions of Section 12 of the Act of 1923, there will be liability upon appellant to satisfy the amount of compensation with right of recovery from the contract. In the instant case, contract between the appellant and respondent No.1 itself is not proved.

10. For the foregoing reasons, the Commissioner was perfectly justified in holding that there was relationship of employee and employer between the appellant and deceased, therefore, first question of law is decided accordingly.

11. So far as second question of law is concerned, the word '**dependent**' has been defined under Section 2 (d) of the Act of 1923, under which a widower of deceased employee is also included in the category of dependant, if he is

wholly or in part dependant on the earnings of employee. There is no exclusion clause under the Act of 1923 excluding any members of the family for any of the reasons. As it is a beneficial piece of legislation, the interpretation of word 'dependent' as given under Section 2(d) of the Act has to be read as it is. Case under Section 304 (A) of IPC was registered alleging negligent act of applicant No.1 for death of his wife Ahilya Bai, but in that case also he has been acquitted though on the ground of benefit of doubt. Even otherwise, there is no such pleading raised by appellant in reply to the application for compensation but for the pleadings that the police has registered case against applicant No.1. Application for compensation under the Act of 1923 is to be decided on its own merits based on pleadings and evidence available on record before the Commissioner under the Employees Compensation Act. As there is no exclusion clause under the definition of dependant, we decide the second question of law against the appellant.

12. For the aforesaid reasons, both the questions of law is decided against the appellant. Appeal being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramamchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Jamal/-