

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 107 of 2014

1. Sitaram Nayak, S/o Daulat Ram Nayak Aged About 50 Years, Occupation- Labour
2. Smt. Basanti Bai, W/o Shri Sitaram Nayak, Aged About 40 Years
3. Minor Arun S/o Sitaram Nayak Aged About 15 Years
4. Minor Manju D/o Sitaram Nayak Aged About 14 Years
5. Minor Alok S/o Sitaram Nayak Aged About 8 Years

No.3 to 5 Minor, Thru- natural guardian Father Shri Sitaram Nayak

All R/o Kailash Nagar, Rambhatha, Tah and District : Raigarh, Chhattisgarh

---- Appellants/Claimants

Versus

1. Sai Chemicals Tedesara Thru- Manager, Sai Chemicals, Tedesara, P.S. Somni, Distt. Rajnandgaon, Chhattisgarh
2. Ashok Kumar Bawankar S/o Bawan Rao Bawankar Aged About 50 Years, Occupation- Complex Swami, R/o Ganj Chowk, Durg, District : Durg, Chhattisgarh

-----Respondents

For Appellants	: Shri GVK Rao, Advocate
For Respondent-1	: Shri Sachin Singh Rajput, Advocate
For Respondent-2	: None appears

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
03.09.2020

1. This appeal filed under Section 30 of the Workmen Compensation Act, now, The Employees Compensation Act, 1923 (for short, 'Act of 1923') is filed by the claimants challenging the impugned award dated 29.06.2012 in case No.82 of WC Act/2008/Fatal by the Commissioner, Employees Compensation, Labour Court, Raigarh, whereby the learned Commissioner dismissed the application filed under Section 22 of the Act of 1923.

2. Facts relevant for disposal of this appeal are that the appellants/claimants filed an application under Section 22 of the Act of 1923 mentioning therein that Kishore Kumar Naik (since deceased) was working as labour under the employment of NA1, Sai Chemicals, Tedesara. NA1 has arranged residential facilities for labourers by taking a complex on rent at 1st Floor from NA2/R2, where the deceased along with other labourers was residing. On 25.12.2007 at 8 am the deceased went for his duty at NA1. During the course of employment, NA1 directed the deceased to look into the interruption of supply of water and to see that there should be uninterrupted water supply. On the directions issued by NA1, deceased went to the residential complex, where he along with other labourers were residing, checked the water taps and thereafter went on roof to check the water tank. During the course of inspection of water tank on roof, he came into contact with high tension electricity supply wire (110 volts) and suffered electrocution, in the aforementioned accident he died.

3. Applicants, who are father, mother and siblings of the deceased filed an application for grant of compensation under Section 22 of the Act of 1923 seeking compensation of Rs.7,75,660/-.

4. NA1 submitted reply to the application and denied all the facts pleaded in the application for claim of compensation. It was further pleaded that his contract company is in Samata Colony, Raipur. The deceased and other employees were employed and working with that company. At the time of accident, deceased was not working in the establishment of NA1. The story mentioned in the claim application under

Section 22 of the Act of 1923 is a concocted story. Death of deceased was not on account of accident arising out of and during the course of his employment with NA1 and claimants are not entitled for any compensation from NA1.

5. NA2, owner of the residential complex did not chose to appear and was proceeded *ex-parte* even after service of notice by way of paper publication.

6. Learned Commissioner, upon appreciation of pleading and evidence placed on record by respective parties, held that on the date of accident deceased was not under the employment of NA1 nor the accident in which the deceased died was arising out of and during the course of his employment. The Commissioner also decided other issues in negative and dismissed the application filed under Section 22 of the Act of 1923, seeking compensation against the death of late Krishna Kumar Naik.

7. Shri GVK Rao, learned counsel for the appellants submits that there is specific pleading by the appellants that the deceased was under the employment of NA1 and was residing in the premises allotted to him by NA1, which has been taken on rent from NA2, owner of the complex. He further argued that there was very specific pleading that NA1 asked the deceased during the course of his employment on 25.12.2007 to go and look as to why water is not coming from the water tap at residential complex and upon his direction, deceased went to the residential complex and checked the water flow in the accommodation, when he did not find any fault/obstruction with the water tap, he went to the roof to check the

water tank and met with the accident. He further argued that the claimants have examined as many as three witnesses to prove their case and all of them have stated that the deceased was working as labourer with NA1 and met with an accident during the course of his employment. The findings recorded by the Commissioner are perverse.

8. Per contra, Shri SS Rajput, learned counsel for respondent-1 submits that NA1 in his reply have very specifically denied the employment of the deceased with the Company and there was no employee-employer relationship between the two. The appellants could not able to prove that the death of late Krishna Kumar Naik was due to accident arising out of and during the course of his employment. Three witnesses were examined on behalf of the claimants and none of them was working with the deceased and they were not present on the spot where the deceased was allegedly employed. After the accidental electrocution death of deceased, FIR was registered against NA2, owner and the Contractor of the Complex/Building where the accident occurred. There is no allegation against NA1/Company in the FIR. Contrary to the pleadings of claimants, NA1 entered into witness box to prove the pleadings that the deceased was not under his employment and the owner NA1 was examined along with supervisor, they have filed the attendance register of the workers and labourers of NA1 to prove that on the date of accident, deceased was not under the employment with NA1. He submits that learned Commissioner on appreciation of pleadings and evidence, has rightly arrived at a finding that on the date of accident, deceased was not under the employment of NA1 and further that the

death of deceased was not an accident arising out of and during the course of employment.

9. We have heard learned counsel for the respective parties and also perused the record.

10. The ground for dismissal of the application filed under Section 22 of the Act of 1923 is that the applicants failed to prove that the deceased died in the accident arising out of and during the course of his employment with NA1. Perusal of record would show that claimants in support of their case, have filed enquiry report submitted by the Police on 13.02.2008 as Ex.P1, Intimation of death as Ex.P2 and post-mortem report as Ex.P4. Ex.D1 is Statement of appellant-1 recorded under Section 161 of the CrPC and Ex.D2 is FIR. The claimants have examined Sitaram Naik, father of deceased as AW1, Raj Kumar Naik as AW2, and Madan Lal Banjare as AW3 in support of their pleadings. Perusal of above evidence would show that no document has been filed to show that the deceased was under employment of NA1. AW1 admits that the accommodation in which the deceased was residing was owned by NA2. Perusal of address given in the affidavit of the witness would show that he is resident of Rambhatha, Raigarh, whereas it is alleged that deceased was working with NA1 at Tedesara Police Station, Somni, District Rajnandgaon and therefore, his evidence with regard to the fact that on the date of accident he went on duty at about 8 am and he was instructed by the Officer of NA1 Company to cure the defect in water supply in the premises, where the deceased was living is not proved. The claimants further examined RajKumar Naik, who is also resident of

Raigarh he in his affidavit under Order 18 Rule 4 stated that he received information that deceased died on account of electrocution during the course of his employment. He is not an eyewitness nor it is specifically mentioned that from whom he received the information. He in his cross-examination further admitted that he is not aware as to under whose direction/instruction deceased went to repair the water tap or water supply from the water tank. AW3 Madan Lal Banjara, who is also resident of Tahsil Tamnar, district Raigarh, whereas NA1 is situated in district Rajnandgaon. As per his examination-in-chief, he visited the residential place of the deceased on 25.12.2007 and he stayed there. In the morning deceased left for duty to Sai Chemicals, thereafter, he heard that the deceased suffered electrocution. From his evidence also it is clear that the deceased was not there at the place, where he was working ie factory premises. Therefore, it cannot be said and there was proof of instruction/direction given to the deceased during the course of his employment at NA1 premises to go and look after the interruption/obstruction of water from the water tank of the residential place. There is no admissible evidence of employment of deceased with NA1. The findings recorded by the Commissioner is based on the appreciation of evidence available on record.

11. The finding recorded by learned Commissioner that the claimants failed to prove that the death of late Krishna Kumar Naik was on account of the accident arising out of and during the course of employment; is a factual finding.

12. The appellants' appeal filed under Section 30 of the Act of 1923 can only be entertained on substantial question of law. Learned counsel for the appellants could not point out any substantial question of law involved in the appeal.

13. For the foregoing reasons, we do not find any merit in this appeal, the appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge