

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal (C) No.134 of 2015**

Dwarika Gupta, S/o Mangali Prasad Gupta, Aged About 48 Years, R/o Village Bilha, Tahsil Bilha, District Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh (Non-Applicant No.1). **---- Appellant**

Versus

1. Har Prasad Shrivastava, S/o Bajuram Shrivastava, R/o Hirri, Tahsil Bilha, District Bilaspur, Chhattisgarh (Claimant).
2. Smt. Meena Bai Shrivastava, W/o Har Prasad Shrivastava, R/o Hirri, Tahsil Bilha, District Bilaspur, Chhattisgarh (Claimant).
3. Ramlakhan Sahu, S/o Ganesh Ram Sahu, R/o Village Kharkhona, Tahsil Bilha, District Bilaspur, Chhattisgarh (Non-Applicant No.2).

---- Respondents

For Appellant	:	Shri Malay Shrivastava, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay S. Agrawal**Order On Board****02.07.2020**

1. Heard on admission.
2. This Miscellaneous Appeal has been preferred by Non-Applicant No.1 under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter

referred to as 'the Act of 1923') questioning the legality and propriety of the award dated 03.12.2014 passed by the Commissioner, Workmen's Compensation-cum-Labour Court, District Bilaspur (C.G.) (hereinafter referred to as 'the Commissioner') in Case No.05/W.C.Act/2005, whereby the learned Commissioner has awarded the total amount of compensation to the tune of Rs.3,24,370/- along with the interest @ of 12% per annum from the date of the accident till its realisation. The parties to this appeal shall be referred hereinafter as per their description in the Court below.

3. According to the learned counsel for the Appellant, the finding of the Commissioner holding that the Deceased Dev Narayan has died by the accident arising out of and in the course of his employment, is apparently contrary to law. It is contended further that since the deceased does not come within the purview of 'Employee' as provided under Section 2 (1) (dd) of the Act of 1923, therefore, the claim was liable to be dismissed.
4. From perusal of the record, it appears that on account of the accident occurred on 09.07.2004, a claim enumerated under Section 10 of the Act of 1923 has been made by the Applicants, who are the parents of the deceased, claiming total amount of compensation to the tune of Rs.3,93,246/- by submitting *inter alia*, that on the fateful day, their son Dev Narayan, who was a mason (Raj Mistri) by profession, was engaged by Non-Applicant No.2 to work by crusher, in the plot of Non-Applicant No.1/Dwarika Gupta for the construction of his labour quarters. At the relevant time, he came in contact with the electric wire and due to electric

shock, he expired.

5. The aforesaid claim has been contested by the Non-Applicant No.1 by saying that there was no accident occurred as such on 09.07.2004. It is contested further on the ground that since the deceased was not engaged by him, therefore, he is not responsible for the alleged accident and the claim as made, is therefore, liable to be dismissed.
6. In order to establish the claim, the father of the deceased, namely Har Prasad Shrivastava (AW-1) was examined and he deposed that his son was working as a mason (Raj Mistri) and on the date of the incident, he was engaged for the construction of the labour quarters in the plot of Non-Applicant No.1/Dwarika Gupta and has deposed at para 2 of his cross-examination that he was doing his work under said Dwarika Gupta. According to him, his son Dev Narayan, on the fateful day, came in contact with the electric wire and due to which, he expired. The evidence of this witness could not have been rebutted nor any cogent and reliable evidence has been led by the Non-Applicants, in order to disprove the said version. That apart, Ram Lakhan Sahu, who was examined as N.A.W-1 stated specifically at para 2 of his evidence that said Dev Narayan was working in the premises of said Dwarika Gupta under his instructions.
7. The learned Commissioner upon due consideration of the evidence led by the parties has, therefore, rightly arrived at a conclusion that the said Dev Narayan expired on account of the electric shock, while performing his duties under the instructions of Non-Applicants. In so far as the contention of learned counsel for the Appellant that since the deceased was not the employee as per the definition of "employee" provided under clause (dd) of

sub-section (1) of Section 2 of the Act of 1923 and claim is, therefore, not sustainable in the eye of law, is however, noted to be rejected as the accident occurred on 09.07.2004 much prior to the insertion of this clause in place of "Workman" which came into force with effect from 18.01.2010 by Act No. 45/2009, i.e., The Workmen's Compensation (Amendment) Act, 2009.

8. In view of the aforesaid facts, I do not find any question of law, much less the substantial questions of law, which arise for determination in this appeal. The appeal being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge