

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 491 of 2013**

- M/s Orissa Bengal Road Carrier Pvt. Ltd. Plot No. 161, Orissa Bengal Road Carrier, T.P. Nagar, Korba, Tah. and Distt. Korba C.G., Chhattisgarh

---- Appellant**Versus**

1. Smt. Fulmet, W/o Late Jageram, aged about 24 years.
2. Minor Rakheram S/o Late Jageram, aged about 5 years.
3. Minor Ku. Nonibai D/o Late Jageram, aged about 3 years
4. Minor Naresh Kumar S/o Late Jage Ram, aged about 2 years

No.2 to 4 are Minors through their natural guardian mother Smt. Fulmet, W/o Late Jageram, aged about 24 years.

5. Sukhlal S/o Malikram Aged About 50 Years

All residents of village Pendrimahua, P.S. Dharamjaigarh, Distt. Raigarh, presently at Behind Sec.6/C, Paadimaar Bhadrpara BALCO, Tehsil & District Korba, Chhattisgarh.

6. Manish Agrawal S/o Ved Prakash Agrawal, aged about 21 years, R/o Bondkala, P.S. Bondkala, District Bhiwani (Haryana), Presently At- Plot No.161, Orissa Bengal Road Carrier, T.P Nagar, Korba, Tehsil & District Korba C.G.

---- Respondents

For Appellant : Mr. Sameer Oraon, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****26/05/2020**

1. This appeal is under Section 30 of the Employees' Compensation Act, 1923 (for short 'the Act of 1923') filed by

appellant-employer challenging the judgment dated 7.3.2013 passed by the Commissioner, Employees' Compensation Act-cum-Labour Court, Korba (for short 'the Commissioner') in Case No.3/WC Act/2009/Fatal, granting a sum of Rs.4,15,960/- as compensation to the respondents for the death of Jageram, who died in the course of his employment.

2. Brief facts relevant for disposal of this appeal are that Jageram was working as labourer (Hammal) and on 20.3.2008 when he was unloading aluminium bundles/rolls from the truck bearing registration No.CG04-2473, one bundle/roll fell down on him as a result he sustained grievous injuries on his chest & other parts of body. He was immediately taken to the CIMS Hospital, Bilaspur, where, in the course of treatment, he succumbed to his injuries on 21.3.2008 at 11.00 a.m. Respondent Nos.1 to 5 filed claim application under Section 22 of the Workmen's Compensation Act, 1923 (for short 'the Act of 1923') before the Commissioner seeking compensation for the death of Jageram.
3. The claim was resisted by appellant herein by raising a ground that the deceased was not his permanent employee as he was working under a Contractor and that the deceased himself along with owner & driver of truck are responsible for the accident. It was also pleaded that a claim for compensation under the Act of 1923 is not maintainable as the accident took place while use of motor vehicle, therefore, the competent Motor Accident Claims Tribunal will have jurisdiction to entertain the claim made by the claimants.

4. Non-applicant No.2 also submitted reply on almost similar pleadings as taken by non-applicant No.1 in his reply.
5. Upon appreciation of pleadings and evidence brought on record by both the sides, the Commissioner has partly allowed claim application vide judgment dated 22.6.2010 and awarded compensation to the claimants. Being aggrieved, appellant-employer preferred an appeal before the High Court, which came to be registered as MAC No.1128/2010. The High Court allowed the said appeal, set aside the judgment dated 22.6.2010 and remanded the matter to the Commissioner to decide the same afresh after taking note of grounds urged by appellant in Para-6 of his written statement and evidence available on record for fixing the liability.
6. Pursuant to the order of remand, the Commissioner again took-up the matter and afforded opportunity to both the sides to adduce additional evidence. None of the parties led additional evidence. The Commissioner, on the basis of materials already available on record, vide impugned judgment allowed claim application in part; awarded compensation of Rs.4,15,960/- to respondent-claimants and held the appellant liable to pay amount of compensation on the ground that deceased Jageram died as a result of an accident arising out of and in the course of his employment and that the relationship between deceased and appellant is that of employer and employee.
7. Mr. Sameer Oraon, learned counsel representing appellant would argue that the deceased could not be held to be a

"workman" as defined in Section 2 (1) (n) of the Act of 1923, as he was engaged only on casual basis by Contractor on daily wages, for unloading the goods from a truck. Since there was no 'employee' & 'employer' relationship between the deceased and the appellant, the respondent-claimants are not entitled to claim any compensation under the Act of 1923 and the claim application itself was not maintainable.

8. We have heard learned counsel for appellant and perused the record.
9. Since learned counsel for appellant has disputed the status of deceased being a 'workman' under the provisions of the Act of 1923, we must look at the definition of 'workman', both pre-amended & post-amended, which came into effect on 8.12.2000, under the Act of 1923.
10. Section 2 (1) (n) of the Act of 1923 was amended by the Workmen's Compensation (Amendment) Act, 2000, with effect from 8.12.2000. Prior to aforesaid amendment, Section 2 (1) (n) reads thus:-

“(n) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -”

11. After the amendment, Section 2 (1) (n) of the Act of 1923 reads thus:-

“(n) "workman" means any person who is-
 (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub- divisional office of a railway and not employed

in any such capacity as is specified in Schedule II, or

- (ia) (a) a master, seaman or other member of the crew of a ship,
- (b) a captain or other member of the crew of an aircraft,
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
- (d) a person recruited for work abroad by a company.

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India or,

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.”

12. From perusal of above, it is apparent that definition of ‘workman’ as it originally existed in the Act of 1923 excluded the workman whose employment was of a casual nature and who were employed otherwise than for the purpose of employer’s trade or business. However, Section 2 (1) (n) was amended by the Workmen’s Compensation (Amendment) Act, 2000 with effect from 8.12.2000 whereby the words *‘other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer’s trade or business’* were omitted in the definition of ‘workman’.

13. In case at hand, the date of accident is 21.03.2008 and a bare reading of above quoted amended definition of ‘workman’ which was prevailing on the date of accident, particularly

clause (ii) of Section 2 (1) (n) of the Act of 1923, makes it crystal clear that a person employed in any such capacity as is specified in Schedule-II comes within the category of 'workman'. Schedule-II attached to the Act of 1923 contains a list of persons who are included in the definition of workman and under Entry No.xxxvii of this Schedule, any person who is employed for the purpose of loading or unloading a vehicle is also covered under the definition of 'workman'. Entry No. (xxxvii) reads as under:-

“(xxxvii). employed for the purpose of loading or unloading any mechanically propelled vehicle or in the handling or transport of goods which have been loaded in such vehicles; or”

14. In the case at hand, appellant is engaged in the business of transportation of goods and loading & unloading of goods is the part of its business activities. The deceased met with an accident while unloading a truck in the premises of appellant. Appellant had examined Manish Agrawal as NAW-1 and this witness has stated that deceased was working for appellant and the company had paid for his treatment. Thus, as per definition of 'workman' prevailing on the date of accident i.e. on 21.3.2008, as discussed above, there is no doubt that the deceased was covered under the definition of 'workman' under Section 2 (1) (n) of the Act of 1923. This being the position, we are of the considered opinion that the Commissioner has not committed any error in holding that the deceased was a workman.

15. As regards the second submission of learned counsel for appellant that there was no employer-employee relationship between the deceased and appellant. The Commissioner has recorded a finding that on the date of accident, the deceased was working for the appellant. This is a factual finding and the law provides that award passed by the Commissioner can be entertained only on a substantial question of law.
16. We do not find any question of law much less substantial question of law involved in this appeal for consideration.
17. From the facts and circumstances of the case as well as Entry No.xxxvii of Schedule-II of the Act of 1923, the deceased was a workman and the Commissioner has not erred in holding so. The appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-