

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 264 of 2015**

1. Radheshyam S/o Shri Jhagru Sahu, Aged about 61 years,
2. Kala Bai W/o Shri Radheshyam, Aged about 58 years,
3. Pritam S/o Shri Radheshyam, Aged about 40 years,
All R/o Village Arjuni, Police Station Gundardehi, Distt. Balod (C.G.).

---- Appellants**Versus**

1. Balaji Enterprises, Plot No.353/8, Street 4 Pragati Nagar Risali, Bhilai Nagar, Tahsil and Distt. Durg (C.G.).
2. The Executive Engineer (Sudhar Evam Sadharan), C.G. State Power Distribution Company Limited Bemetara (C.G.).
3. The Executive Engineer Construction Division, 32 Bagalo Durg (C.G.).
4. The Assistant Engineer, Sub Division (CSD), C.G. State Power Distribution Company Limited Bemetara (C.G.).
5. The Oriental Insurance Company Limited, Rajendra Park Chouk Durg, Distt. Durg (C.G.).

---- Respondents

For Appellants	: Shri Bharat Gulabani, Advocate.
For Respondent No.1	: None
For Respondents No.2 to 4	: Shri Anuroop Panda, Advocate on behalf of Shri B.D. Guru, Advocate
For Respondent No.5	: Shri H.S. Patel, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****28/01/2021**

1. Appellants/claimants have filed this appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'E.C. Act') (prior to 18/01/2010 known as Workmen's Compensation Act) challenging the judgment

dated 06/02/2015 passed by the Commissioner for Employees Compensation Act-cum-Labour Court, Durg, Chhattisgarh (hereinafter referred to as 'Commissioner') in Case No.92/W.C.Act/2012-Fatal whereby learned Commissioner dismissed the application under Section 10 of the E.C. Act for grant of compensation.

2. Facts relevant for disposal of this appeal, are that, on 03/07/2012, Meghnath Sahu was working under the 1st respondent (Contractor). He was a registered contractor in 'A Class' with Chhattisgarh State Electricity Distribution, Construction and Maintenance, Bemetara Durg and he was executing the contract of establishing Sub Station. On 03/07/2012, Meghnath Sahu was working under the supervision of one Mithlesh Nishad at the site of new Sub Station Umariya, Bemetara. The nature of work was erection of pole, laying on cable, installing of B.C.P. insulator machine etc. On instructions of supervisor, Meghnath Sahu went to Umariya Chowk for getting holes on B.C.P. angle breaker along with co-labourer Kamal. When they were returning from the shop of blacksmith, on the way, they saw one calf came in contact with barbed fencing wire. Meghnath Sahu tried to pull out calf from barbed fencing wire by pulling his leg, in the said process, he suffered electric shock. In the said accident, Meghnath Sahu died due to electrocution.

3. Appellants/applicants/claimants who are parents and sibling of deceased Meghnath Sahu filed an application under Sections 10 of the E.C. Act seeking compensation of Rs.4,23,149/- pleading therein that the deceased was working as labourer and earning Rs.150/- per day.
4. Non-applicant No.1/Contractor submitted reply to application admitting the fact that deceased was his workman. It was pleaded that the injury was not an employment injury and all the employees working on the date of accident were insured with non-applicant/Insurance Company.
5. Non-applicants No. 2 to 4 have admitted that work of establishment of new Sub Station was awarded to non-applicant No.1 and death of Meghnath Sahu was not on account of accident arising out of and during the course of employment.
6. Learned Commissioner considering the pleadings made by respective parties has formulated as many as six issues for consideration. On appreciation of pleadings and evidence brought on record by respective parties, learned Commissioner held that claimants have failed to prove that death of Meghnath Sahu was in an accident arising out of and during the course of employment and dismissed claim application.
7. On 14/09/2015, this appeal was admitted on the following substantial question of law :-

“Whether the accident occurred can be termed to have happened during the course of the employment so as to attract the payment of compensation under the Workmen Compensation Act ?”

8. Shri Bharat Gulabani, learned counsel for the appellants/ claimants submits that learned Commissioner erred in dismissing the application for grant of compensation erroneously. He further submits that there is ample evidence available on record to show that on the date of accident, deceased Meghnath Sahu was under the employment of respondent No.1/Contractor, who was engaged by respondents No.2 to 4 for establishment of new electric Sub Station. On the date of accident, deceased was working on the site when supervisor of site instructed him to get holes on B.C.P. angle breaker from blacksmith. While returning from shop of blacksmith on the way, he came into contact with electric cable which was lying on the road. As he was returning after getting the work done from blacksmith during working hours and returning to work site, it is proved that accident took place while deceased was in employment.
9. Per contra, Shri Anuroop Panda, learned counsel for respondents No.2 to 4 submits that deceased not met with an accident on road. Act of the deceased when he met with an accident was not part of his employment. The accident

did not take place on work site, but on side of public road. Deceased exposed himself to danger in pulling out calf, which came in contact with live electric cable fell down in agriculture field. This was not part of work, for which, deceased was employed. The Commissioner has rightly dismissed the application considering that claimants failed to prove the death of late Meghnath Sahu arising out of and during the course of employment.

10. Shri H.S. Patel, learned counsel for respondent No.5/Insurance Company submits that learned Commissioner has rightly dismissed the application as accident was not arising out of and during the course of employment. Deceased exposed himself to the danger and an added peril by his own imprudent act, hence, claimants are not entitled for any compensation under the E.C. Act.
11. We have heard learned counsel appearing for the respective parties and perused the record of the claim case.
12. Claimants in their claim application have pleaded that accident took place when deceased Meghnath Sahu was trying to pull the calf from barded fencing wire, he came in contact with broken live cable lying on road and met with an accident. The claimants have examined appellant No.1 Radheshyam as AW-1. He admitted that on the date of accident, deceased was not on his work and went to see the

calf. Relevant portion of his cross-examination is extracted below :

“यह कहना सही है कि उस दिन वह काम पर नहीं गया था और बछड़ा देखने चला गया था ।”

13. Kamal Kumar Gond was examined as AW-2 who in his evidence stated that when he and deceased were returning from shop of blacksmith on the road, they saw one calf was stuck in barbed fencing wire of agricultural field. Meghnath Sahu tried to release the calf, but as on the fencing wire there was electric supply, Meghnath Sahu also stuck on barbed fencing wire and suffered electric shock. Miltlesh Kumar supervisor of respondent No.1 was examined as AW-3, who in his evidence stated that Meghnath Sahu stuck on barbed fencing wire while saving the calf. He admitted that place of accident was not work site. He has not sent the deceased on a place where accident took place and he of his own went there.
14. K. Satyanarayan was examined as NAW-1, who is one of the partner of non-applicant No.1 contractor. He admitted that the place where accident took place was not the work site. Deceased met with an accident while trying to pullout the calf from barbed wire. This act of deceased is outside the purview of the work allotted to him. Similar statement has been made by V.K. Banjare, who is an Assistant Engineer and examined on behalf of respondents No.2 to 4.

15. From the aforementioned pleadings and evidence available on record, it is apparent that accident did not take place where deceased was engaged for his work. Even if it is accepted that deceased has been sent for some work of construction of Sub Station outside the work site, then also, it is not a case where deceased on coming or going to such place, suddenly met with an accident unknowingly without any of his conscious act. Even if the pleadings and evidence brought on record by the claimants are taken as it is, it is a case where deceased was returning from the shop of blacksmith along with other co-labourer. On the way, he saw one calf in restless position near barbed fencing wire of agricultural field, he tried to pull out the calf from barbed fencing wire by pulling his leg and he also came into contact of electricity and suffered electrocution. The act of deceased was not incidental to the work assigned to him by his employer. Even if, pleadings and evidence are accepted that in discharge of his duties, he went outside of work site under the instructions of supervisor to the shop of blacksmith, while returning, he went on the side of the road near barbed fencing wire of agricultural field and exposed himself to an added peril by his own imprudent act. As per evidence of Kamal Kumar Gond (AW-2), calf who was in contact with barbed fencing wire is in restless position within the barbed

fencing wire, which itself shows that calf was not in normal circumstances in between barbed fencing wire.

16. The Hon'ble Supreme Court in case of **Mackinnon Machenzie and Co. (P) Ltd. v. Ibrahim Mahmmmed Issak** reported in **(1969) 2 SCC 607** has held that application for compensation will succeed, if accident has occurred on account of a risk which is an incident of the employment, unless of course the workman has exposed himself to an added peril by his own imprudent act. Paragraph-5 of the judgment reads as follows :

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it”. The words “arising out of employment” are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.” In other words there must be a causal relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as

such--to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.....”

17. In view of pleadings and evidence brought on record and nature of accident projected, it cannot be said that accident of late Meghnath Sahu was on account of risk, which is an incident of an employment.
18. The Hon'ble Supreme Court in case of **Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Another** reported in **(2007) 11 SCC 668** has considered its judgment passed in **Ibrahim Mahmmmed Issak** (supra) and held thus :

“40.The Commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a causal connection between accident and serious injury so as to fulfil the requirements of the terms "out of employment". Indisputably, there has to be a proximate nexus

between cause of death and employment. A stray statement made by Appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in cross-examination.”

19. The Hon'ble Supreme Court in another case of **Malikarjuna G. Hiremath v. Branch Manager, Oriental Insurance Company Limited and Another** reported in **(2009) 13 SCC 405** has considered the accident of a driver who after parking his vehicle went to pond and died due to drowning. While considering the aforementioned two judgments has held thus :

“14. It is the specific case of the claimants that on 30.11.2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. The High Court was not justified in holding that the present appellant was liable to pay compensation.”

20. If in the light of aforementioned rulings of Hon'ble Supreme Court, facts of present case is taken into consideration, it is apparent that deceased was engaged in the work site of establishment of Electricity Sub Station, he was sent to shop of blacksmith and while returning, deceased left the road and went near agricultural field where one calf was in restless position in barbed fencing wire and while trying to pull out the calf, he met with an accident. The manner in which said accident is pleaded does not come within the purview of Section 3 of the E.C. Act.
21. For the foregoing reasons, we are of the considered opinion that learned Commissioner is perfectly justified in arriving at a finding that death of late Meghnath Sahu was not on account of accident arising out of and during the course of employment. There was no casual connection between the work for which deceased was employed and accident. To attract the provisions of Section 3 of the E.C. Act, there must be some causal connection of death with the nature of employment and work, in which, deceased was engaged. Accordingly, substantial question of law framed in this appeal is answered against the appellants.
22. In the result, the appeal is liable to be and is hereby dismissed being devoid of any merit.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge