

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.547 of 2012

M/s.Krishna Coke (India) Pvt. Ltd.

Appellant

Mr.G.K.Acharya, Sr.Advocate

-versus-

Pooja Behera and others

....

Respondents

Mr.Biswojit Mohanty, Advocate

CORAM:

JUSTICE B. P. ROUTRAY

ORDER

11.8.2022

Order No.

17.

1. The matter is taken up through Hybrid mode.
2. Heard Mr. Acharya, learned Senior Advocate along with Mr.Budiha, for the Appellants and Mr. Mohanty, learned counsel for the Respondents.
3. Present appeal by the employer is directed against impugned judgment/award dated 31st March, 2007 passed by the Deputy/ Asst. Labour Commissioner — Cum — Commissioner for Workmen Compensation, Cuttack in W.C.Case No.34-D/2007.
4. The deceased-Ranjan Behera was working as a Bhati Mistry/Foreman under employment of the present Appellants i.e., M/s. Krishna Coke (India) Pvt. Ltd, Jajpur having its registered office at Cuttack. He died in the hospital on 3rd June, 2006 due to the injuries sustained in the accident dated 31st May, 2006. His wife and two minor children claimed compensation to the tune of Rs.6,00,000/- on account of death of the deceased in the accident

arising out of and in course of his employment under the Appellants as Bhati Mistry/Foreman. The Commissioner in the impugned award has directed for payment of compensation of Rs.4,19,000/- along with interest @12% from 3rd June, 2006.

5. Mr. Achayra without disputing the employment and remuneration of the deceased submits for the Appellant that the Commissioner before passing the award neither issued any notice to the present Appellant, who was the Opposite Party before the Commissioner, nor framed any issue to decide the dispute before passing of the award. Thus, for non-compliance of the provisions of Rule 26, 27 and 28 of the Employees' Compensation Rules, 1924 (hereinafter stated as '1924 Rules') the award is liable to be set aside.

6. The substantial question has been framed in the same line. It is to the effect that, whether the impugned award is unsustainable for non-compliance of the provisions under Rule 26, 27 and 28 of 1924 Rules.

7. Rules 26, 27 and 28 of 1924 Rules specify the requirement of issuance of notice to the opposite parties, their appearance, filing of written statement and framing of issues. The main contention of Mr. Acharya is to the effect that the Commissioner did not issue any notice to the company before proceeding in the matter. Before answering this, it is important to mention here that prior to coming in the present appeal, the Appellants had earlier approached this Court in W.P.(C) No.11793 of 2009 challenging the same award on the plea that it was passed *ex-parte* without

granting any opportunity of hearing to the Appellants. This Court by order dated 17th August, 2012 dismissed the said writ petition with the observation that the award is not an *ex-parte* order. The relevant observations of the order are reproduced below:

“Xx .. xx .. Taking into consideration the above materials of facts and statements of the site manager so also the spot enquiry and after hearing both parties since the Commissioner has rightly passed a reasoned award, this Court holds that the same is not an *ex-parte* order and as such is not inclined to interfere with the same.

Accordingly the writ petition stands dismissed.”

Against the same, Writ Appeal No.308 of 2012 was preferred, which was also dismissed being devoid of merit.

8. It means this court has already adjudicated on this contentious issue and answered in negative against the appellant regarding issuance of notice and valid service of the same. Such finding of this Court in the earlier order is enough to suggest that there is valid service of notice and appearance before the Commissioner. So what is now contended by the Appellant on the same ground is not permissible.

9. However, as seen from the copy of the L.C.R., order dated 6th February, 2007 of the Commissioner reflects that notice was issued to the opposite parties. The subsequent orders further reveal that since the opposite parties did not appear, the Commissioner inspected the spot in exercise of power under Rule 36 & 37 of 1924 Rules. The fact of participation of the Appellants in the inspection proceeding by the Commissioner is

not disputed at the Bar. It otherwise justifies the earlier finding of this court that that the award is not an ex parte award and that notice has been sufficiently served on the present Appellants in the claim proceeding.

10. Next, the question of framing of issue will only arise when there is affirmation by one party and denial by the other. Admittedly the Appellant did not file any written statement despite valid service of notice. Rule 28 of 1924 Rules postulates that, the Commissioner after considering the written statement shall ascertain the material proposition on which the parties are at variance and then proceed to frame the issues. As stated earlier since no denial was there from the side of the Appellant in absence of any written statement, question of framing of issue does not arise at all. So the Appellant fails in his contention that the award is bad for non-compliance of such provisions of rules. As such, the substantial question of law is answered against the Appellants.

11. In the result, the appeal is dismissed.

12. The certified copy of the order dated 17th August, 2012 passed in W.P.(C) No.11793 of 2009 is kept on record.

(B.P. Routray)
Judge

