

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.335 of 2017

Junior Engineer, Tirtol Electrical Sub-Division, Jagatsinghpur and Others ***Appellants***

Mr. Ramanath Acharya, Advocate

-versus-

Basanta Nayak and Others ***Respondents***

Mr. D.K. Mohapatra, counsel for Respondents 1&2

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
22.12.2022

Order No.

- 19.
1. The matter is taken up through hybrid mode.
 2. Heard Mr. R. Acharya, learned counsel for the Appellants and Mr. D.K. Mohapatra, learned counsel for claimant – Respondents 1 & 2.
 3. It is submitted by Mr. Acharya as well as Mr. Mohapatra, learned counsel for both parties that in the meantime CESU has been taken over by Tata Power Central Odisha Distribution Limited (TPCODL) and the status of the present Appellants as the officers of TPCODL, and TPCODL be accepted.
 4. The prayer is allowed.
 5. Present appeal by the employer - Appellants is directed against the impugned judgment dated 20th May, 2017 of the learned Commissioner for Employee's Compensation-cum-Deputy Labour Commissioner, Cuttack passed in E.C. Case No.238-D of 2014, wherein compensation to the tune of Rs.8,69,640/- including interest

has been granted, along-with additional penalty to the extent of 50% of the compensation, on account of death of deceased – Sujit Kumar Nayak arising out of and in course of his employment as labourer under Appellant No.1.

6. Mr. Acharya forcefully submits that the relationship between employer – employee did not exist between the Appellants and the deceased, namely Sujit Kumar Nayak at any point of time and therefore, the Appellants are not liable to pay any compensation. Mr. Acharya further submits that the amount of Rs.65,000/- paid by the appellants to the claimants on account of death of said Sujit Nayak by way of settlement dated 21st May, 2014 has not been counted by the tribunal while directing for payment of compensation amount.

7. The admitted fact remains that the deceased while unloading an electric transformer in the premises of the office of Executive Engineer, Paradeep Electrical Division (present Appellant No.2) sustained injuries and died in the hospital. It is further admitted that on the date of accident B-shift work was in progress and ten numbers of workmen were engaged. The time schedule for B-shift work is from 2 pm to 9 pm. The accident took place on 20th May, 2014 at 7.30 pm.

8. In view of the above stated admitted facts, now the onus shifts to the employer – Appellants to prove that the deceased was not their workman and they are not his employer. In this regard, no material is produced by the Appellants. Looking to the evidence of O.P.W.1 and O.P.W.2, who are two witnesses examined on behalf of the Appellants and officers working under them, nothing is seen to deny the deceased as their workman. Rather they have admitted about sustenance of

injury by the deceased at time of his working in office premises while unloading the transformer. The absence of name of the deceased from the acquaintance register under Ext.A, adduced from the side of the Appellants, would not help them to satisfy their contention, because neither it's author nor it's relevancy in respect of workman engaged on that fateful day have either been examined or spelt out by the Appellants. Further, the commissioner has rightly disbelieved the same being not the original. When the Appellants admitted that the deceased at the time of accident was engaged in unloading the electric transformer within the premises of their office, the relevancy of filing any acquaintance register is lost. Thus, as per clear and categorical admission of O.P.W.1 to the effect that the deceased died while unloading the transformer during B-shift work, no further trace of doubt remains to accept the deceased is the workmen under the appellants and therefore, no merit remains in the contention of Mr. Acharya to dispute the employer – employee relationship.

9. The further ground seen against the contention of the appellants that, had the deceased been not an workman then there would not have any occasion arose for the Appellants to go for any settlement giving any such amount of compensation to the claimants by way of settlement, as per their submission. Since it is the contention of the appellants that an amount of Rs.65,000/- was given to the claimants on account of death of the deceased by way of settlement, it shows that the appellants taking advantage of absence of any record are trying to plead the contrary disputing their relationship with the deceased as employer – employee.

10. It is seen from Ext. D/1 that an amount of Rs.65,000/- was paid to Basanta Nayak, claimant No.1 (present Respondent No.1) with the

condition that the claimants will not make any further claim or file any compensation case against the CESU in future. The same was signed with seal of the Executive Engineer as well as the Inspector-in-Charge of Tirtol P.S. Therefore, at this stage, the appellants cannot deny or dispute their relationship with the deceased as employer-employee.

11. However, in view of payment of Rs.65,000/- in favour of Basanta Nayak, claimant-Respondent No.1, as is evident from Ext.D/1, the same needs to be adjusted from the entire compensation amount as directed.

12. Mr. Acharya again submits that the alleged sub-contractor, namely Manas Sarkar was never engaged by the appellants as their contractor and in absence of any material produced to that effect in the claim application, it is erroneous to accept him as the sub-contractor under the present appellants. This is a matter between the appellants and said sub-contractor or contractor, where the rights of the workman is concerned, and that too the Commissioner in the impugned order has extended the right of recovery in favour of the Appellants from said contractor. In view of the admitted facts discussed above, this court declines to give any further opinion upon relationship between the appellants with the sub-contractor.

13. It is further seen from the impugned award that 50% of the entire compensation amount has been directed to be paid additionally by way of penalty. Since payment of Rs.65,000/- as mentioned under Ext.D/1, is accepted by this court to have been paid to the claimants immediately after the death of the deceased, the further direction of the commissioner to impose the penalty to the extent of 50% of the

compensation amount is seen unjustified. As such, said direction of the commissioner to the effect of payment of penalty is waived.

14. In the result the appeal is disposed of with a direction to the Appellants to pay the compensation amount of Rs.8,69,640/- along with interest @ 12% per annum from the date of accident, as directed by the learned Commissioner, subject to adjustment of Rs.65,000/- mentioned under Ext.D/1.

15. Since the entire compensation amount has already been deposited before the learned Commissioner, the same along with accrued interest thereof be disbursed in favour of the claimant – Respondents within a period of two months from today.

16. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

