

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.487 of 2019

***Chief Executive Officer, Central
Electricity Supply Utility of Odisha and
Others*** ***Appellant***

Mr. S.C. Dash, Advocate

-versus-

Laxmidhar Rath and Others ***Respondents***

Mr. P.K. Mishra, counsel for Respondents 2 and 3

CORAM:
SHRI JUSTICE B. P. ROUTRAY

ORDER
06.04.2022

Order No.

18. 1. Heard Mr. S.C. Dash, learned counsel for the Appellants and Mr. P.K. Mishra, learned counsel for claimant - Respondent Nos.2 & 3.
2. Present appeal is directed against award dated 25th January, 2016 of the learned Commissioner for Employee's Compensation-cum-Assistant Labour Commissioner, Cuttack in E.C. Case No.499-D of 2011 wherein compensation to the tune of Rs.5,46,175/- along with interest has been awarded on account of death of the deceased in course of his employment as Trainee Technician under the Appellants.
3. The employment of the deceased under the Appellants is seriously disputed by learned counsel for the Appellants. It is submitted that the deceased was never employed by the Appellants nor was he engaged on the date of accident through the alleged contractor – Respondent 1. It is further submitted that the date of

accident is 13th July, 2010 and the Appellants entered in-to the contract with the contractor – Respondent 1 with effect from 15th July, 2010 to engage personnel through outsourcing. As such, it is submitted that since no employer – employee relationship is established, the Appellants are not entitled to pay any compensation on account of death of the deceased.

4. The facts as reveal from record are that, on 13th July, 2010 the deceased on the occasion of Ratha Yatra was doing some electrical work climbing on an electric pole near Ratha field at Khandapada town and due to electric shock he suddenly fell down from the pole on the ground and sustained multiple injuries. As per the PM report, the deceased died due to fracture of skull on the occipital region and further congestion to the brain. The deceased died on the same day. Consequent upon the accident, UD G.R. Case No.36 of 2010 was registered and as per the enquiry report submitted therein the deceased while conducting electric work on the electric pole fell down and sustained bleeding injuries on his head and other parts of the body. The certified copies of the UD F.I.R., enquiry report, post mortem report and other papers were proved under Ext.1 to Ext.5 before the learned Commissioner. Upon perusal of those documents relating to the death of the deceased in the accident dated 13th July, 2010, no further doubts remains about his death due to fall from the electric pole while doing electric work on behalf of appellant authorities.

5. The next question is whether the deceased was an employee under the Appellants who are the CESU authorities of Nayagarh Electrical Division.

6. To examine this question, as it reveals a letter dated 14th July, 2010 of the Manager (Electrical) (Appellant No.3) was adduced on behalf of the claimants. Issuance of such letter is disputed by the learned counsel for the Appellants in course of hearing. But upon perusal of the memorandum of appeal it reveals that the Appellants nowhere disputed issuance of said letter by them. It is submitted by Mr. Dash that such a document whereof the original was not produced and not marked as exhibit should not have been relied on by the commissioner. In other words, the inference drawn from the submission is that, the letter dated 14th July, 2010 of the Manager (Electrical) of Nayagarh Electrical Division is though admitted to have been issued but objected on the ground that the same is not acceptable on record for its original is not produced. considering the scope of the provisions under the EC Act such a strict standard of proof as contended by the Appellants in respect of the letter dated 14th July, 2010 is not required keeping in view the sufferings and poor condition of the claimants. Moreover the Photostat copy of the said letter which is still available in the lower court record is never denied absolutely by the Appellants.

7. A perusal of said letter dated 14th July, 2010 reveals that the Manager (Electrical) has assured to give death benefit and engagement of one legal heir of the deceased on account of his death in the accident. Admittedly the contractor has not come up to contest the case who is the best person to say about the engagement of the deceased under the Appellants. As such, keeping in view all such facts and the evidence of P.W.1, the contention of the Appellants that no employer – employee relationship was there with the Appellants and

the deceased, is rejected. The evidences as stated by P.W.1 before the Commissioner so also the materials collected in course of police enquiry are clear to the extent that the deceased was authorized to climb up the electric pole for electric work. Accordingly the finding of the learned Commissioner in this regard is confirmed and it is held that there existed employer – employee relationship between the Appellants and the deceased on the date of accident.

8. It is further submitted by Mr. Dash that while conducting the compensation case before the learned Commissioner he was not given the exact date of hearing for which he filed a petition on 21st May, 2014. But upon examination of the lower court record it reveals that on 7th December, 2015 a notice was issued by Registered Post with A.D. to all the Appellants to appear before the Commissioner and the acknowledgments of such notices issued are very much available on the lower court record disclosing the fact of receipt of such notice by all the Appellants on 10th December, 2015. The LCR further shows that the case was listed on 26th December, 2015 and then on 30th December, 2015 when the arguments were heard in absence of the present Appellants. Therefore no illegality is seen in the proceedings of the Commissioner in conducting the case and the contention that the Appellants were kept in dark by the Commissioner before passing of the judgment is found incorrect.

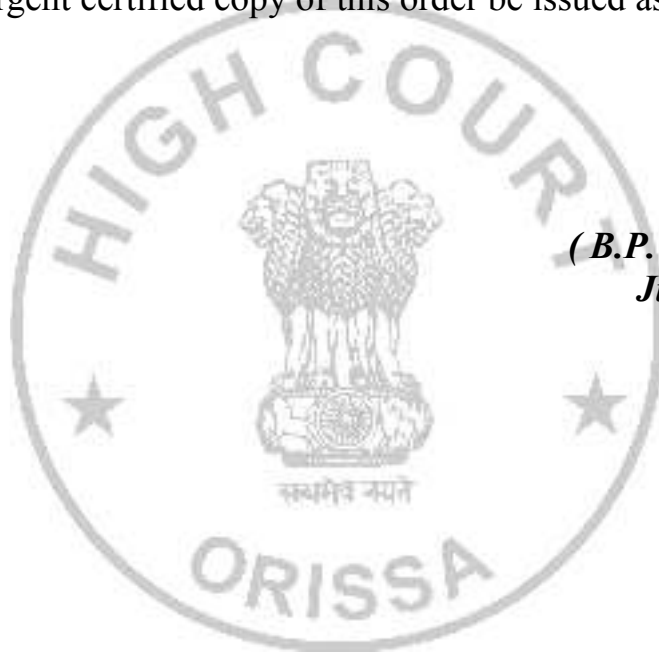
9. One more contention is raised by Mr. Dash that the claimants have stated in their claim petition about death of the deceased in the train accident. Upon thorough perusal of the LCR and upon examination of the entire pleadings, the same appears to be an

inadvertent mistake made on the part of the claimants, may be due to their illiteracy, which has no impact on their claim.

10. In the result the appeal is dismissed.

11. Since the entire compensation amount has already been deposited before the learned Commissioner, the same shall be disbursed in favour of the claimants without further delay preferably within a period of four weeks from today.

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



(B.P. Routray)
Judge

M.K.Panda