

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.117 of 2016

***Authorized Officer, In-charge of
Managing Director, M/s.NESCO
Utility, Januganj and Another***

....

Appellants

Mr. Ramanath Acharya, Advocate

-versus-

Mana Naik and Others

....

Respondents

Mr. Adhiraj Mohanty, counsel for Respondent Nos.1-4

**CORAM:
SHRI JUSTICE B. P. ROUTRAY**

**ORDER
10.01.2022**

Order No.

- 09.
1. The matter is taken up through video conferencing mode.
 2. Heard Mr. R. Acharya, learned counsel for the Appellants and Mr. A. Mohanty, learned counsel for the claimant – Respondents.
 3. The present appeal by the Appellants-employer who are NESCO Ltd., now renamed as TATA Power North Electric Distribution Ltd. (TPNEDL) is against the impugned award dated 2nd December, 2015 of the learned Commissioner for Employee's Compensation-cum-Assistant Labour Commissioner, Keonjhar in E.C. Case No.15 of 2014.
 4. In the impugned judgment the learned Commissioner upon adjudicating the dispute has directed for grant of compensation to the tune of Rs.5,36,742/- on account of death of the deceased by electrocution in course of employment.

5. The case of the claimants is that the deceased was temporarily employed as a daily wage labourer under the Appellants and used to discharge his duties as and when called. On the date of accident, i.e. 30th June, 2013 he was engaged with cleaning work of Ukuchabeda 33 KV Electric Transmission line and while cleaning the bird's nest in the electric pole fitted with a sub-station transformer, he died due to electrocution of high voltage electric current.

6. It is contended on behalf of the Appellants that the deceased was never employed under them but unauthorizedly cleaning the electric line and as such they are not liable to pay any compensation on account of death of the deceased.

7. On the other hand Mr. Mohanty, learned counsel for the claimant – Respondents while supporting the impugned award has submitted that the Appellants were not bona-fide in their stand before the learned Commissioner and suppressed many facts.

8. The learned Commissioner upon analyzing the evidence from both sides has directed for payment of compensation in favour of the claimants by holding the death of deceased in course of and arising out of employment under the Appellants.

9. Having heard both parties and upon perusal of the impugned judgment it is seen that the Appellants have examined three witnesses on their behalf as OPW Nos.1, 2 and 3 and issues No.I and II are with regard to employment of the deceased under the appellants. It is seen that a police case has been registered in Pandapada Police Station as P.S. Case No.55 of 2013 wherein OPW.2 and another Subash Jena, admittedly working as the driver and Junior Technician under the

NESCO Ltd. have been made accused. It is also admitted that a sum of Rs.40,000/- and further sum of Rs.10,000/- has been paid by the Appellants on account of death of the deceased as such.

10. It also reveals that an agreement dated 23rd July, 2014 has been executed to the effect that the LR dependents shall not pursue the case against the accused persons.

11. The learned Commissioner has categorically observed that the Appellants did not produce the duty chart register, maintenance register and payment register before the Commissioner despite directions. The evidence of P.W.1 to P.W.4 examined on behalf of the Claimants are clear to suggest the fact that the deceased was working as a temporary daily-wage labourer under NESCO who was discharging the work as and when required by the employees of NESCO. A departmental enquiry was also conducted against those employees of NESCO relating to the death of the deceased in the accident in question but surprisingly the said enquiry report was not produced before the Commissioner. The Appellants have failed to produce the duty chart of the staff of NESCO, namely Sukhlal Patra and Subash Jena (accused persons in the criminal case) on the date of accident who allegedly engaged the deceased on the date of accident.

12. Having considered all such facts and upon analyzing the evidence adduced from both sides, the approach of learned Commissioner for the conclusion that the deceased died in course of and arising out of his employment under the Appellants cannot be faulted with.

13. In the result the appeal is dismissed.

14. Copy of this order be uploaded in the High Court's Official Website as per Court's Notice No.514 dated 7th January, 2022.

(B.P. Routray)
Judge

M.K.Panda

