

05.08.2024

Sl. No.8

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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 250 of 2023

With

IA No. CAN 1 of 2023

**The Agent, Satgram Incline Colliery,
Eastern Coalfields Limited**

Vs.

Smt. Shilpa Devi Ram & ors.

Mr. Soumya Majumdar

Mr. Syed Nurul Arefin

Mr. Syed Moyeenul Arefin

Mr. Rahul Singh

.... For the appellant

Mr. Subrata Bhattacharjya

Ms. Benazir Sk.

... For the respondent nos.1,2 & 3

1. As prayed for by the learned Counsel for the appellant, leave is granted to place on record the certified copy of the order under appeal during course of this day.

2. The present appeal arises out of judgment and order dated 28th March, 2023 passed by the Court of learned Commissioner, Employees' Compensation, Durgapur under the Employees' Compensation Act, 1923 whereby and whereunder the Commissioner has found that the deceased employee (Chandan Ram), husband of the present appellant died as a result of injury sustained in course of his employment and

therefore, directed payment of compensation under Section 4(a) of the Employees' Compensation Act, 1923.

3. The case of the widow of the deceased employee before the Commissioner was that while her husband was on duty in the premises of the colliery he suffered injury by way of electrocution, which led to his death while on duty.

4. Learned Counsel for the appellant assailing the order of the Commissioner has submitted that the deceased had entered the premises unauthorisedly. He was not supposed to be at the place where his body was found as he was not deputed or supposed to be performing any duty at the place of accident.

5. The Commissioner, while allowing the claim, has relied upon the terms of settlement dated 5.4.2017 just after the fatal accident. The said terms of the settlement cannot be relied upon as it was entered into by the Deputy Manager (Personnel) of the appellant-company under a very volatile circumstance.

6. Even if the settlement is accepted to be a genuine settlement, without admitting to the same, from reading of the settlement one cannot derive any admission of the fact that the deceased sustained injury at the place of his duty.

7. Learned Counsel for the appellant has drawn the attention of this Court towards the evidence by way of

depositions of OPW No.1 and OPW No.2 given in the course of the proceedings before the Commissioner. OPW No.1 was the Senior Manager Mining at the relevant point of time whereas OPW No.2 was the Colliery Engineer of the appellant-company.

8. He has placed reliance on the statement made by both before the Commissioner in paragraph 7 of their respective depositions. The sum and substance of both of their statements in paragraph 7 of their evidence is one and the same; and is to the effect that the deceased, fitter helper had unauthorisedly entered into the electric substation without permission of anybody and that it was not his work place. Thus, it is quite apparent that the learned Counsel is denying the fact that the death of the employee has occurred as a result of injury sustained in the course of discharge of his duties as an employee of the company.

9. The cross-examination of OPW No.1 has also been referred to by the learned Counsel for the appellant to sustain such submission. The relevant statement in the cross-examination relied upon by the learned Counsel for the appellant which occurs in the second but last paragraph of the first page of his cross-examination reads as follows :

“....substation is situated within the premises of our colliery. Police did not examine me regarding the death of Chandan Ram. It is a fact that Chandan

Ram died by electrocution while he was on duty in the night of 04.04.2017”.

10. He then goes on to say that “*as Chandan Ram was working as helper attached with the mechanical fitter, so he was not supposed get electrocuted out of and in course of his employment.*”

11. Learned Counsel for the respondents, on the other hand, has sustained the findings of the Commissioner. It is submitted that from the entire pleadings and depositions before the Commissioner no basis has emerged to even suggest let alone conclude that the deceased had met with a fatal accident otherwise than in course of his employment in the employees’ premises. He too has referred to the deposition of OPW Nos.1 & 2 as well as the terms of settlement dated 5.4.2017 in this regard.

12. Having considered the rival submissions and upon going through the materials on record, we first propose to deal with the submissions of the learned Counsel for the appellant that the deceased had entered the premises unauthorisedly.

13. The written statement submitted by the present appellant before the Commissioner at paragraph 14, on which reliance has been placed by the learned Counsel for the appellant during his submissions, reads as follows :

“14. That this opposite party submits that the deceased Chandan Ram not within his duty hours, and also on the alleged date and time no accident was caused inside the colliery premises, so the deceased Chandan Ram not due to any accident in course of and out of his employment, so this answering O.P. is not liable to pay any compensation.”

14. The same raises a dispute regarding the deceased employee's claim by denying presence of the petitioner at the place of accident being not within his duty hours, in other words, beyond his duty hours so as to disentitle his claim that the death occurred as a result of and in course of his employment. From bare perusal of the written statement we do not find any specific assertion to the effect that the deceased was working at a place where he was not assigned any duty.

15. We therefore ventured to examine the terms of settlement dated 5.4.2017 (exhibit 2 before the Commissioner), copy of which has been annexed. The place of duty to which the deceased was assigned is clearly mentioned in the same with the following words *“....Sri Chandan Ram M. No.189739 fitter helper of Satgram Incline was on duty in IIIrd shift on dated 04.04.2017 and deputed for duty at Surface Sub-Station.”* It goes on to record that *“during the working hours he met with an accident in the said sub-station and expired between 2 a.m. to 6 a.m.”*

16. The place where the deceased was deputed is evident from the statement made by OPW 1 at paragraphs 5 and 6 of his deposition. From a reading of these two paragraphs it is clear that the deceased has marked his attendance for duty and that he was deployed on surface for attending breakdown and other maintenance jobs of surface machinery.

17. In so far as the deposition of OPW No.2 is concerned, we find that OPW No.2 has also stated in his evidence that the deceased was deployed on the surface for attending breakdown and other maintenance jobs. The cross-examination of OPW No.2 to which our attention has been drawn by the learned Counsel for the appellant, in fact, destroys the premises for making an assertion regarding the deceased having sustained injury at a place other than that to which he was assigned. During his cross-examination OPW No.2 has specifically stated that there was no specific place of duty of the deceased-employee as he and other fitters had to attend any site of the colliery as and when the situation required.

18. In view of this material/evidence adduced in course of the proceedings before the Commissioner, which we find consistent with the terms of settlement dated 5.4.2017 recorded above, we do not find any infirmity in conclusion of the learned Commissioner

that the death had occurred due to an injury (electrocution) sustained in course of and arising out of the deceased's employment.

19. In so far as reliance placed by the learned Counsel for the appellant on statement of OPW 1 and OPW 2 regarding unauthorized entry of the deceased into the electric sub-station in paragraph 7 of their evidence, we find that the same is not only inconsistent with the facts in this regard recorded in the terms of settlement also signed by the appellant, but also inconsistent and cannot coexist with the consistent depositions given by the two OPWs on the point that the deceased was deputed on the surface for attending breakdown and other maintenance jobs at the substation, being the place where the body of the deceased was found.

20. Viewed thus, even if we were to exclude what has been recorded in the terms of settlement dated 05.04.2017, the inescapable conclusion based on deposition of O.P.W. No. 1 and O.P.W No. 2 is that the death of Chandan Ram was due to an accident (electrocution) arising out of and in the course of his employment.

21. We thus find that present employer's liability to pay compensation is established in terms of Section 3 of the Employees' Compensation Act relevant extract of which reads as follows:-

"3. Employer's liability for compensation. (1) *If personal injury is caused to a [employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:*
... .."

22. The moment the liability to pay compensation was determined based on evidence before the Commissioner, the next step required as per the statute was to determine the amount of compensation in terms of Section 4(a) of the Employees Compensation Act. Relevant extract of Section 4(a) reads as follows:-

[4. Amount of compensation.- (1) *Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-*

(a) Where death results from injury	An amount equal to [fifty per cent] of the monthly wages of the deceased [employee] multiplied by the relevant factor; or an amount of [one lakh and twenty thousand rupees], whichever is more;
.....	

23. We find that the Commissioner has thus rightly proceeded to award compensation as per the statutory provisions.

24. We, therefore, find no infirmity requiring any interference with the judgment dated 28.03.2023 passed by the Commissioner.

25. Before parting with the case, we would like to record that the Act of 1923 is a welfare legislation for providing social security to the workmen and family from injury and loss suffered on account of such

injury including death of a workman occurring in the course of and arising out of employment. The laudable intention of the Act is required to be enforced for the benefit of the workman and to provide social security to the workman and family in cases like the present case where we have found that the deceased Chandan Ram died as a result of injury (electrocution) sustained in course of his employment while on duty in the 3rd shift at the electric sub-station. We find that the order passed by the Commissioner is a well-considered and reasoned order based on evidence adduced during the proceedings. The order ensures fulfilment of the avowed objectives of the Act being a beneficial legislation. We, therefore, find no merit in the appeal and the same is dismissed.

26. As a consequence thereof, the connected application is also dismissed.

27. It is needless to say that it will be open to the respondent to take steps for availing the compensation deposited with the Commissioner, in accordance with law.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)