



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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FAO-1084-2024 (O&M)**Date of decision : 24.09.2024****Hukam Chand Malik @ Hukam Chand****..... Appellant**

versus

Raj Kumar and another**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Garvit Mittal, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Appeal is directed against order dated 22.12.2023 passed by Commissioner exercising his powers under the Employee's Compensation Act.
2. Appellant hired respondent No.2-Ramesh Kumar for demolition and construction of a room at his premises. Respondent No.2 further hired respondent No.1 as a labour. On 24.05.2011, while respondent No.1 was working on the site, he met with an accident and suffered injuries leading to permanent disability. Respondent No.1 filed claim petition invoking provisions of 1923 Act seeking compensation on account of injuries suffered by him during the course of employment. Respondent No.2 denied that respondent No.1 was engaged as a labour and rather claimed that he was working as a sub-contractor.
3. Appellant in his written statement denied any relationship with respondent No.1 and claimed that he contracted demolition of a



room to respondent No.2 and had no relationship with respondent No.1.

4. On the basis of the pleadings, Commissioner framed following issues:-

“1. Whether the relationship of employer and employee between the respondents and applicant existed?

2. Whether the accident of applicant arose out or in during the course of his employment with the respondents?

3. Relief?”

5. While returning the finding on issue No.1 in favour of respondent No.1, Commissioner awarded compensation of Rs.1,28,513/- alongwith interest @ 12% per annum apart from reimbursement of medical expenses of Rs.1,40,000/-.

6. Appellant claims that he has no liability to pay the compensation, yet Commissioner has directed him being principal employer to shoulder the liability.

7. I have heard counsel for the appellant and have carefully gone through the records of the case.

8. The only argument raised is with respect to liability of the principal employer. The same is governed by Section 12 of the Employee’s Compensation Act, 1923. The same reads as under:-

“12. Contracting.—(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any [employee] employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall



apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a [an employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

9. The aforesaid provision has been interpreted by Delhi High Court in ***Brijesh Kumar Verma vs. Aurangjeb, 2018 (4) SLR 171*** observing as under:-

“xx xx xx

The object for enacting the Employees” Compensation Act even as early as 1923 was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. Section 12 safeguards the right to compensation when the employer delegates the work to another person. Section 12 is intended to secure to an employee the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against



the person who had employed such contractor to execute the work. The Act refers to him as the principal. The main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged by the principal employer through a contractor for the work which the principal employer is supposed to carry out. If a person substitutes another for himself to do his work, he ought not to escape the liability which would have been imposed upon him, if he had done it himself. The intention of the Legislature in enacting Section 12 provision appears to be that the injured employee or the dependent of a deceased employee who has been awarded compensation by the Commissioner, should not be put to any difficulty in realising such amount of compensation on account of any recalcitrance of the employer or on account of the vicissitudes of his (the employer's) financial position. The Employees' Compensation Act, 1923 is a piece of social beneficial legislation and its provisions have to be interpreted in a manner so as not to deprive the employees of the benefit of the legislation. Reference be made to *Bhutabhai Angadbhai v. Gujarat Electricity Board, 1987 (1) L.L.N. 156; M.R. Mishrikoti v. Muktumsab Hasansab Asoti, (1972) 2 Mys LJ 449; Koli Mansukh Rana v. Patel Natha Ramji, 1992 ACJ 772; Payyannur Educational Society v. Narayani, (1996) 72 FLR 709; Public Works Department v. Commissioner, Workmen Compensation, (supra); Koodalingam v. Superintending Engineer, Project Circle, Public Works Department, Kozhikode, 1994 (2) L.L.N. 779; Sardar Sewa Singh v. Hindustan Lever Ltd., 1980 (1) L.L.N. 566 and Executive Engineer/Deputy General Manager, Sub Urban Division, DHBVNL, Bhiwani v. Priyanka, 2017 (153) FLR 302* in which the Courts have examined the scope of Section 12.

22. Section 12 of the Act has, in effect, stretched the contours of the word "employer" wider as to include the person contracting with another person for carrying out the work of the former. In such cases, the provision enjoins that the principal shall stand substituted as the employer. This is achieved by the words "where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer". The



principal may have a claim for indemnity from his contractor or delegatee but the victim or his dependents are not to be involved in such disputes.

23. Section 12 will apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. The agreement or contract between the principal and the contractor shall govern only their inter-se rights and liabilities, and cannot affect the right of the employee or the dependants of the employee, to get the compensation from the principal or from the contractor at their option.

24. Section 12 secures compensation to the employee who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own interest is expected to provide a surer basis for payment of the injured employee than the intermediary, who may often turn out to be a man of straw, from whom compensation may not be available. This is the purpose for which the claimant is given the option under section 12(3) of the Act to claim the compensation either from the principal or from the contractor.

25. The contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement conceived by the principal to avoid confrontation directly with the employee engaged in the execution of the work. In either case, the interests of the employee need to be protected and that is what this provision secures to the employee. The principal can seek indemnification from the contractor if he has been made answerable for the payment of compensation. The right of the principal to be indemnified has thus been incorporated under Section 12 (2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.

26. Section 12 of the Act gives protection to the employee in case of an accident and secures compensation from the persons who can pay, so that such employee will not be dependent upon a petty contractor(s) who may themselves not be able to pay compensation on account of their financial inability.



27. Section 12 is an enabling provision for the benefit of the employee(s) and enacted with the clear objective that the employee(s) should not be hampered by technicalities or practical difficulties of deciphering the correct employers. A pragmatic method has thus been devised for fixing the liability of the principal employer and thereby affording speedy relief to the employee for payment of compensation on account of the accident, though the principal has been invested with the right of indemnifying himself from the contractor who may have employed the employee and may have been responsible for taking work from him.”

10. In view of the aforesaid ratio of law, appellant cannot escape his liability to pay compensation to the victim though in terms of Section 12(2) would be entitled for indemnification by the Contractor.

11. With the aforesaid observations, the instant appeal is disposed off.

(PANKAJ JAIN)
JUDGE

24.09.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No