
(2008) 12 JH CK 0035
In the Jharkhand High Court
Case No : M.A. No. 31 of 2006

Anil Kumar Singh

APPELLANT

Vs

Smt. Shobha Prasad

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2009) 1 JCR 321

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Advocate : Manish Kumar, for the Appellant; Rajeev Ranjan and Abhay Kr. Mishra, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 is directed against the order dated 24.11.2005 passed by the Presiding Officer, Labour Court, Bokaro in W.C. Case No. 02 of 2004 whereby he has dismissed the application filed by the appellant for compensation mainly on the ground that there exist no relationship of employer and employee.

2. The facts of the case lie in a narrow compass:

The appellant filed application for payment of compensation on the ground of receiving injury while working as Lath Operator in the factory of the respondent. The appellant claimed that he received the injury arising out of and in course of employment and as a result of injury, he suffered permanent disability and loss of 100% earning capacity. The respondent appeared and contested the claim taking preliminary objection regarding maintainability of the case. The respondent denied the allegation that the appellant is the employee. The respondent's case is that the appellant is an employee of M/s. Chhinnamastika Steel Industries, Bokaro Industrial Area. Bokaro and by virtue of being an employee, he came within the provisions of Employees State Insurance Act, 1948

and his registration number is 1161187 and he has been getting medical treatment and other benefits under the provisions of the aforesaid Act for the injury received by him. The Presiding Officer, Labour Court, Bokaro after considering the facts and the evidence adduced by the parties, came to the conclusion that there was no relationship of master and servant or employer and employee in between the appellant and the respondent and the alleged accident was not arising out of and in course of employment with the respondent. Accordingly, the claim application was dismissed.

3. Mr. Manish Kumar, learned Counsel appearing for the appellant, assailed the impugned order as being illegal and wholly without jurisdiction. Learned Counsel submitted that the Court below has committed serious illegality insofar as it held that there exist no relationship of employer and employee between the appellant and the respondent. Learned Counsel submitted that there are sufficient evidences on the record and conclusive proof to the fact that the appellant met with an accident in course of employment of the respondent M/s. V.J. Rao & Company, Bokaro and, therefore, he is entitled for compensation. Learned Counsel submitted that the Court below has rather committed serious illegality in disbelieving the statement of the witnesses without any valid reasons.

4. Mr. Rajeev Ranjan, learned Counsel appearing for the respondent, on the other hand, submitted that admittedly the appellant was in the employment of M/s. Chhinnamastika Steel Industries, Bokaro Industrial Area, Bokaro and being an employee, he was a member of ESI and was covered under the provisions of E.S.I. Act. Learned Counsel submitted that the appellant received compensation under the said Act for the injury sustained.

5. The undisputed fact is that the appellant is an employee of M/s. Chhinnamastika Steel Industries, Bokaro Industrial Area, Bokaro, the appellant's case is that in the night of 19.11.2001 while he was working in the factory of the respondent- M/s. V.J. Rao & company, he suffered grievous injury and his right hand was broken.

6. The appellant produced three witnesses including himself and all the witnesses have deposed that the appellant suffered injury in the night of 19.11.2001 while working in the factory of the respondent. It has come on the record that on application filed by the appellant the Deputy Commissioner, Bokaro directed the Labour Enforcement Officer to conduct enquiry. On enquiry, the Labour Enforcement Officer reported that the appellant suffered injury arising out of and in the course of employment of the respondent. The said report was produced before the Court below. It appears that the witnesses examined by the appellant are the employees working in the factory of the respondent Mrs. Shobha Prasad, the proprietor of the factory, namely M/s. V.J. Rao & Company, examined herself as witness. She has admitted that her husband borne all the expenses incurred for the medical treatment of the appellant Mr. Kamlesh Prasad, the Supervisor of the respondent-Company, was also examined as DW.2. He has stated that he helped the appellant and got him admitted in the hospital. He further stated that

in the night of 19.11.2001 at about 1.00 a.m., the appellant was brought in an injured condition and he got him admitted in the hospital. He further deposed that all the expenses were borne by the respondent Company.

7. After having considered the entire facts of the case and the evidence available on record, we have no hesitation in holding that the appellant while working in the respondent-Company sustained injury and the relationship of employer and employee has been established by the evidence adduced by the appellant including the report of the Labour Enforcement Officer. The Court below has not correctly appreciated the evidence and the finding recorded by the Court appears to be perverse in law.

8. For the reasons aforesaid, this appeal is allowed and the impugned order passed by the Labour Court, Bokaro is set aside. The matter is remitted back to the Court below for passing fresh order and deciding the compensation payable to the appellant.

Jaya Roy, J.

I agree.