

(1987) 04 OHC CK 0024
In the Orissa High Court

Birat Chandra Dogra

APPELLANT

Vs

Chandrama Behera

RESPONDENT

Date of Decision : 03-04-1987

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (1987) 2 ACC 419

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—Employer is the appellant u/s 30 of the Workmen's Compensation Act.

2. The appellant is a works contractor. In course of employment, the workman Raghu Behera sustained fatal injuries. His widow, the claimant made a claim for compensation against the appellant. Appellant disputed the liability alleging that he had not employed the deceased who was employed by the Labour Contractor engaged by him.

3. The Commissioner considered the materials on record and held that the deceased was in employment under the appellant. In the absence of materials, he found that the assertion in the petition that the deceased was getting monthly wages of Rs. 500/- cannot be discarded. He awarded compensation of Rs. 21,000/- to the claimant.

4. Depositing the amount of Rs. 21,000/- this appeal has been filed. Mr. P. Kar, the learned Counsel for the appellant submitted that the appreciation of evidence regarding the deceased to be the workmen employed by the appellant is erroneous. This is a pure question of fact and there is no scope for interfering with the same in this appeal which is to be confined to substantial question of law only.

5. Mr. P. Kar, the learned Counsel for the appellant submitted that except the assertion in the claim petition, there is no evidence that the workman was

getting a remuneration of Rs. 500/- per month. Miss R. Saha, the learned Counsel for the claimant submitted that finding regarding monthly remuneration of the workman is a pure question of fact and ought not to be interfered with. If there would have been some material in support of the assertion of the claim in the petition, the submission of Miss Saha would have some force. In this case, however, there is no material. Finding based on no material is vitiated and a substantial question of law arises for consideration.

6. Normally, I would have set aside the order and remitted the proceeding back for fresh enquiry on the question of remuneration. This would be prejudicial to the respondent claimant. Judicial notice can be taken of the minimum wages notified by the State Government. There being no evidence that the deceased was a skilled labourer, the minimum wage is Rs. 7/- (seven) per day for unskilled labourer would be applicable. The monthly remuneration of the deceased is thus Rs. 210/-. At this rate, the compensation comes to Rs. 8,000/-. However, by order of this Court, an amount of Rs. 10,500/- is directed to be disbursed to the claimant. Direction of refund would be prejudicial to the claimant. Therefore, I specifically order that no refund shall be demanded from the claimant.

7. In the result, the appeal is allowed in part. No costs. The appellant is entitled to refund of the sum of Rs. 10,500/- with interest accrued on the bank deposit as has been directed by this Court.