
(1986) 07 MP CK 0062
In the Madhya Pradesh High Court

Budhwara Bai

APPELLANT

Vs

Cement Corporation of India and Another

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Employees Compensation Act, 1923 — Section 12, 30

Citation : (1987) 2 ACC 522

Hon'ble Judges : Gulab Chand Gupta, J

Bench : Single Bench

Judgement

Gulab C. Gupta, J.—This appeal filed u/s 30 of the Workmen's Compensation Act, 1923, arises out of an accident which has been considered by this Court in Misc. Appeal No. 145/81 (Smt. Surajbai v. Cement Corporation of India Ltd. Bilaspur & Anr) and therefore involves identical questions of fact and law. The aforesaid appeal has been allowed by this Court by its order dated 22-7-86. Since the accident and the legal submissions are the same, it is not considered necessary to record those findings again in this appeal. The aforesaid judgment shall, therefore, govern the disposal of this judgment.

2. The only other submission made by the learned Counsel for the appellant is that Budhwara (PW. 1) in her evidence before the Commissioner has accepted that her husband was working under Horilal contractor and since the aforesaid contractor has not been made a party to the case the claim was not maintainable. It is true that Budhwara in her cross examination admitted that her husband was working under Horilal contractor. This admission does not however mean that the deceased was not working within the factory premises or with the respondents. Indeed her cross examination read as a whole would indicate that the deceased was working with the respondent No. 2 as a regular employee. The witness has also stated that Horilal was one of the contractors employed by this respondent. As against this the respondents have not placed anything to hold to the contrary. The learned Commissioner has not considered this evidence and has held that Sumritdas was not the employee of respondent No. 2. This

reasoning does not appear to be correct because from the evidence on record it is clear that Horilal was employed by the respondent No. 2 as sub-contractor who in turn employed the deceased workman. It is not in dispute that respondent No. 2 was employed by respondent No. 1 as a contractor. Under the circumstances the only conclusion would be that Horilal was a subcontractor and the deceased was employed by him in connection with the contract of the respondent No. 2. In such a situation Section 12 of the Act would come into operation and would make the respondent No. 1 principal employer in relation to the deceased workman. As a principal employer the respondent No. 1 would be liable to pay the compensation under the Act. In view of this legal situation the fact that the subcontractor was not made a party, would not make any difference. No law or judicial decision has been placed before this Court to enable it to hold to the contrary. Under the circumstances, non-joining of Horilal would not be fatal. In this view of the matter it is not possible to sustain the impugned order.

3. Since the claim of the appellant was dismissed only on the aforesaid legal ground and since the aforesaid legal ground has been decided in favour of the appellant and against the respondents, the appeal has to be allowed by awarding a sum of Rs. 11520/- as compensation with costs. Counsel fee Rs. 200/-. In case the amount is not paid within 60 days from the date of this judgment, it will carry interest @ 10% per annum w.e.f., 1-1-79 till the date of realisation.