
(1995) 03 RAJ CK 0038
In the Rajasthan High Court
Case No : C.M.A. No"s. 399 and 415 of 1993

Divisional Forest Officer

APPELLANT

Vs

Shri Ram Prasad and Others

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(1), 3(1)

Citation : (1997) 3 LLJ 71 : (1995) 3 WLC 716

Hon'ble Judges : R.S. Kejriwal, J

Bench : Single Bench

Advocate : Suresh H. Mathur, for the Appellant; N. Soral, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Kejriwal, J.—These miscellaneous appeals u/s 30(1) of the Workmen's Compensation Act, 1923 (for short the "Act") have been directed against the orders dated December 30, 1992, passed by the Commissioner for Workmen's Compensation, Kota, awarding compensation to the claimant-Respondent No. 1.

2. As common questions of law are involved in these appeals, they are decided by one common judgement,

3. The first submission of the counsel for the appellant is that the deceased Smt. Geeta and Smt. Chhania were in the employment of Shri Durga Shanker and not in the employment of the appellant and as such the claim cannot be decreed against the appellant.

4. On the other hand, counsel for the claimant respondents submits that even for the sake of arguments, it be taken that the deceased Smt. Geeta and Smt. Chhania were employed by Durga Shanker Contractor, they worked for the appellant and as such by virtue of Section 12(1) of the Act, the appellant is also liable for the payment of compensation to the claimants. In support of his arguments, he placed reliance on a judgment of Kerala High Court reported in K. Koodalingam Vs. Supt. Engineer and Others,

5. Section 12(1) of the Act reads as below:

"12. Contracting : (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purpose 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 workman employed in the execution of the work any compensation which he would have been liable to pay if that workman 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 workman under the employer by whom he is immediately employed."

6. This Section provides that if a workman is employed by a contractor for the trade or business of the principal and in case he suffers any injury during the course of employment, the principal shall be liable to pay compensation. The case is directly covered by the judgment of Kerala High Court reported in K. Koodalingam's case (supra). The facts of this case were that P.W.D. engaged a Contractor for construction of canal. The Contractor engaged workmen to do the work. Two workmen died in landslide while at work. It was held that P.W.D., as principal, was liable to pay compensation and also entitled to be indemnified by the contractor. Contract between the principal and the contractor cannot affect the right of the workmen or their dependents to claim compensation from either of them at their option. Under these circumstances, I do not find any force in the aforesaid submission of the counsel for the appellant.

7. Counsel for the appellant next submitted that the death of Smt. Geeta and Smt. Chhania was not caused on account of accident arising out of or during the course of employment but on account of lightning. It was an act of God and as such the appellant was not liable to make the payment of compensation. In my opinion, this argument has also no force. The words accident arising out of and in the course of employment, as used in Section 3(1) of the Act have been interpreted by this Court and also by other High Courts. In Trustees of the Port of Bombay Vs. Yamunabai, the Bombay High Court held that the words "arising out of employment" were wide enough so as to cover the cases where there may not necessarily be a direct connection between the injury caused as a result of accident and the employment of the workman.

8. In Parwatibai Vs. Manager, Raj Kumar Mills, the M.P. High Court was of the view that the word "accident" u/s 3(1) of the Act has been used in popular and ordinary sense and all that it means is mishap or untoward event not expected or designed. If the injury or death is unexpected or without design on his part, then the death or injury would be by "accident" although it was brought about by other causes. The same view was taken in the case reported in Public Works Department Vs. Smt. Kausa,

9. This Court in *Union of India v. Harphool* reported in 1988 (56) F.L.R. 347, held that an accident within Section 3(1) of the Act need not be confined to the injury caused by mechanical process or by some vehicle. The same view was taken by this Court in the judgment reported in 1988 Labour and Industrial Cases 605 Divisional Railway Manager, Western Railway v. Shamsadi. In this case the workman after being bitten by a scorpion developed tetanus. During the treatment he died. The High Court upheld the Award of Compensation. It is not in dispute that the lightning was at a time when the workmen were on duty and under these circumstances the present cases are squarely covered by Section 3(1) of the aforesaid Act. In my opinion the submission of the counsel for the appellant has no substance.

10. Counsel for the appellant lastly argued that the Commissioner erred in holding that the salary of Smt. Geeta and Smt. Chhania was at the rate of Rs. 750/- p.m. The finding recorded by the Commissioner is based on the material on record. It cannot be interfered in these appeals. No substantial question of law is involved in these appeals and as such both the appeals are dismissed.