
(2008) 04 OHC CK 0033

In the Orissa High Court

Divisional Manager, Orissa Forest Development Corporation
Ltd.

APPELLANT

Vs

Nabati Naik

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Employees State Insurance Act, 1948 — Section 51C
Prevention of Corruption Act, 1988 — Section 12

Citation : (2008) ACJ 2064 : (2008) 106 CLT 579 : (2009) 2 LLJ 165 : (2008) 1 OLR 907 Supp

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

Bench : Single Bench

Judgement

S.R. Singharavelu, J.—Divisional Manager, Orissa Forest Development Corporation Ltd., Angul (C) Division, Angul is the appellant in this appeal filed u/s 30 of the Workmen's Compensation Act, 1923 (in short, "the Act"), which was filed against the order dated 8.8.2001 passed by the learned Commissioner, Workmen's Compensation-cum-Assistant Labour Commissioner (Dhenkanal), Angul in the W.C. Case No. 14 of 1993 wherein a compensation of Rs. 55,973 was awarded.

2. The brief facts of the case are as follows:

One Dhulia Naik of Kutulusingha village, P.O. Maimura within the limits of Thakurgarh Police Station in the district of Angul died by the attack of a wild elephant on 27.2.1993 at about 3.30 p.m. The certified copies of the documents, F.I.R., final report, the challan showing the carrying of the dead body to the hospital and the inquest report of U.D. Case No. 1 of 1993 do substantiate the above fatal blow to the deceased Dhulia Naik by the wild elephant at the above time. At the time of death of the deceased, his age was 26 years. His young widow Nabati is the claimant. She had claimed that her husband died while he was going to bamboo cutting work at Bidamara camp where he was so employed by the contractor of the O.F.D.C. It is on that ground a case was projected that

death was during the course of employment and, therefore, the claimant is entitled to the benefit of the provisions of Workmen's Compensation Act.

3. In proof of the claim of respondent-claimant, besides her examining as PW 1, she had also examined two co-workers of her husband as PWs 2 and 3. They are Karunakar Naik and Narottam Naik. They claimed to have accompanied the deceased while going to cut bamboo on the date of occurrence. PW 1 further contended that on 27.2.1993 while her husband was going to attend bamboo cutting work at Bidamara, on the way he was attacked by a wild elephant resulting in the death of her husband at the spot. The learned Assistant Labour Commissioner after going through the evidence of PWs 1 to 3 has found that although there was cross-examination at length, nothing adverse to that effect could come out.

4. From the side of defence one Bhagirathi Das, an employee of the O.F.D.C. was examined as DW 1. He has produced Exh. A, the payment register of Majhipada camp for the month of February, 1993. According to DW 1 he was working in Bidamara camp of O.F.D.C. from 1991 to 1995, which is known as Majhipada camp. He also said that the bamboo cutting work was carried on, on piece rate basis but not on daily rate basis. In his cross-examination it was stated by him that it was not his duty to call the labourers for cutting bamboo and make payment of wages. Further he admitted that he got information about the death of Dhulia Naik while he was at Bidamara camp. He could not name the workers engaged in bamboo cutting on 27.2.1993. One more significant aspect of the case is that although DW 1 produced Exh. A document showing that the workers engaged in the bamboo cutting in February 1993, no document regarding such employment after 28.2.1993 was produced. It is again significant to note that the incident has taken place on 27.2.1993. Surprisingly, the particulars prior to 27.2.1993 was made available and not to a later date including 27.2.1993. This aspect along with the fact that DW 1 could not name the workers engaged in bamboo cutting on 27.2.1993 would dilute the dispute raised by the O.F.D.C. in respect of the actuality of the death of the deceased in the said employment. This coupled with the evidence of PW 1 to PW 3 would make us to derive a conclusion that the deceased was engaged in bamboo cutting on 27.2.1993. It was also proved that he died of the injury sustained by the attack of the wild elephant at about 4 p.m. while going to the said work.

5. Mr. G. Mohanty, the learned Counsel appearing for the O.F.D.C. vehemently argued that if any person starts from his house and goes to work or employment and falls down en route that may not be called as accident in the course of employment or during the employment. If such a view is taken, then it will be defeating the very object of the provisions of Workmen's Compensation Act. It is unfortunate that the beneficial enactment should be misused by some persons. Reliance was also placed on the decision in the case of Rengasamy R. Vs. Amalraj A., wherein it was observed that the authorities should be more cautious while discharging their duties under the Act and deciding the claims. The Act is a

beneficial piece of legislation that has been enacted to compensate the workmen and their dependants in the event of accidents during the course of employment. It is not to be used to extort money from the people with whom there is no nexus of employment.

6. In order to show that any accident en route employment may not be considered as an accident, "in course of employment" or "during the employment", reliance was placed on two cases. One is New India Insurance Co. Ltd. Vs. G. Krishna Rao and Others, and the other is Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, . In the first case, a labour was employed for construction of railway line and he was found residing in one of the huts provided by the employer at the site itself. In the midnight of the fateful day there was fire in the site which engulfed the hut in which the deceased was sleeping and was burnt alive. It was held in that case that the accident caused by fire had no nexus with the employment of the deceased nor it was incidental to his duties. It was further held that there must be causal relationship between the accident and employment. If by reason of any of those factors a workman is brought within the zone of special danger, the injury would be one which arise "out of employment". To put it differently if the accident had occurred on account of a risk, which is an incident of the employment, the claim for compensation must succeed, unless the workman has exposed himself to an added peril by his own imprudent act.

7. In the above cited Supreme Court case also it was held that in a case of a person going from his home to his place of work if he suffers injury in an accident on the way, it cannot be said that the accident arose out of and in the course of his employment. It was further held that in the deeming provision of Section 51-C of the Employees' State Insurance Act, 1948 (Act 34 of 1948) which came into force by way of amendment by Employees' State Insurance (Amendment) Act, 1966 (Act 44 of 1966) enlarging the scope of "in the course of employment" to include an employee travelling as a passenger by the employer's vehicle to or from the place of work, the legal fiction contained therein, however, does not come into play because the employee was not travelling as a passenger in any vehicle owned or operated by or on behalf of the employer or by some other person in pursuance of an arrangement made by the employer.

8. By relying on those cases, learned Counsel for the appellant submitted that here is also a case where it was stated even by the claimant that her deceased husband was attacked by a wild elephant in the forest when he was going to cut bamboo as he was employed therefore and not during the said work or employment. But the area of bamboo cutting was in Bidamara camp of the O.F.D.C. and the very same area is mentioned in the claim petition also. In the absence of any contra evidence, we may have to take that the accident took place in that particular area where the bamboo was intended to be cut. So, in this particular case, it is not that the accident took place en route the

employment area but it is in the area of employment.

9. Again argument was advanced on behalf of the appellant that even as per the claim application it was only the contractor with whom the deceased was engaged and that he was not engaged directly in the O.F.D.C. In this connection, the learned Counsel has taken me through Sub-section (2) of Section 12 of the Act where it is provided that 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 workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation.

10. Thus, it is only in the event of contractor squarely liable to pay compensation and from whom the workman could have recovered the same the question of entitlement to get compensation will arise. As seen from the evidence of PWs 1 to 3 and DW 1 and Exh. A, we have already found that the direct employment was made in the O.F.D.C. of the deceased person. So the casual statement of the widow of the deceased in her claim application that he was engaged by the contractor may not loom large.

11. At last, the learned Counsel for the appellant argued that the fixation of Rs. 650 per month as basis of award is unacceptable inasmuch as the deceased employee was engaged only on piece rate basis and not daily rate basis. In this connection, reliance was placed on *Khillo Chandramma v. Hindustan Construction Co. Ltd.* 1971 Lab IC 135, in order to indicate the process of calculation of the wages as per Sections 4 and 5 of the Act. Therefore, it is found that the fixation of amount of Rs. 650 per month as per daily wages method is found excessive. It can be something lesser than that in view of the fact that the worker was engaged on piece rate basis and not daily rate basis. However, the variation may not be huge as ultimately the daily wage was calculated only at the rate of Rs. 25 per day in the year 1993. One thing is certain that it is not equal to Rs. 25 as daily wages but is something less than that. In view of the fact that the learned Counsel for the respondent himself fairly conceded to reduce the amount to some extent after deducting Rs. 10,000 (rupees ten thousand) which was awarded towards compensation to the widow respondent-claimant, thus, after deducting Rs. 10,000 from the awarded amount of Rs. 55,973 what is payable is Rs. 45,973 and as to the aforesaid reduction in view of the piece rate a sum of Rs. 5,973 would be reduced making the total award to Rs. 40,000 (rupees forty thousand) which could be just compensation to be paid to the claimant. There is also accrued interest out of the deposited amount in which proportionate amount will go to the respondent-claimant. Along with the above-mentioned Rs. 40,000 proportionate amount of accrued interest would be drawn by the respondent-claimant. The balance amount will go to the appellant. There is no order as to costs.

12. The misc. appeal is disposed of with the above direction.