

(1988) 11 OHC CK 0017
In the Orissa High Court

Executive Engineer, Electrical Operation Division	APPELLANT
Vs	
Subasini Pattnaik	RESPONDENT

Date of Decision : 10-11-1988

Acts Referred:

Employees Compensation Act, 1923 — Section 32

Citation : (1989) 2 ACC 58 : (1989) 67 CLT 307

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

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—This is an employer's appeal u/s 32 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act").

2. Claiming the deceased employee to be a workman, his dependants filed an application under the Act for compensation. Contesting the same the employer disputed that the deceased being a storekeeper at the time of his death was performing the duties which are purely clerical in nature and as such was not a workman.

3. It is not in dispute that the Commissioner under the Act would have no jurisdiction to award compensation unless the deceased is a workman. Thus, the main question to be decided in this case was whether the deceased was a workman. There is no dispute that the deceased was a Storekeeper. Whether the Storekeeper is a workman, would depend upon the nature of job performed by him.

4. Mr. G. Rath, learned Counsel for the appellant, submitted that Store-keeper would not be a workman since in Schedule-II, persons employed to discharge the job of clerical nature, are excepted.

5. Whether the job of a Storekeeper is of clerical nature, is one of fact. Both the parties depended upon materials, which have not been brought to record. The employer seems to have produced some typed copies indicating the nature of job of a Storekeeper without adducing any evidence that at the time of death of the

deceased, those duties were being performed by him. As a result, the claimants could not get opportunity to cross-examine the witness to find out whether such were job of a Storekeeper. What was the nature of the job of the deceased was within the knowledge of the employer and there was no possibility of the dependants knowing the same. However, they relied upon the provisions of the Orissa P.W.D. Code to prove the nature and duties of a Storekeeper.

6. When, the employer admitted the deceased to be an employee but challenged his status to oust the jurisdiction of the statutory authority in a benevolent Statute, all facts ought to have been brought to the record. However, question of jurisdiction being involved in this case, the Commissioner ought to have been more scrutinizing. On the facts the decision is erroneous in law which is liable to be set aside.

7. The employer is responsible in this case for not producing all materials and not examining a witness competent to state on oath the duties of a Storekeeper during the period when the employee met with the fatal accident. Since the claimants would have to suffer a prolonged enquiry, the employer who is responsible for the delay, shall pay a cost of Rs. 2,000/- to the claimants, which shall be paid in this Court to Mr. B.P. Das, learned Counsel for the respondents within two weeks from today. In case the amount is paid in this Court, the matter shall be enquired into afresh by the Commissioner, being satisfied that the amount has been paid in this Court. Failing to pay the amount as stipulated, the impugned order shall stand confirmed.

8. In the result, appeal is allowed and subject to the conditions imposed is remitted back. No costs. Send back the L.C.R. at once. Both the parties shall appear before the Commissioner on 28-11-1988 on which day, the Commissioner shall fix a date of enquiry.