

(2017) 04 GUJ CK 0094
In the Gujarat High Court
Case No : 1297 of 2003

KIRITBHAI DESAIBHAI PATEL

APPELLANT

Vs

GITABEN JAGDISHKUMAR PATEL & ORS.

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Citation : (2017) 04 GUJ CK 0094

Hon'ble Judges : Mohinder Pal

Bench : Single Bench

Advocate : NIRAV C THAKKAR, YOGINI H UPADHYAY

Final Decision : Dismissed

Judgement

1. Aggrieved from the order dated 4.10.2000 passed by the Commissioner (Workmen's Compensation) Ahmedabad in Workmen's Compensation Application No. 69/1992 and the order dated 25.11.2002 passed in Misc. Application No. 267 of 2000, the appellant has preferred this appeal.

2. The deceased Jagdish was working as a supervisor in the poultry farm of the appellant. On the relevant date, he was spraying some pesticide, at that time, he inhaled toxic fumes, and as a result of which, he was taken to the nearby hospital from where he was referred to the Civil Hospital Ahmedabad, and on the way, he expired. The widow of the deceased preferred a claim petition. The Commissioner for Workmen's Compensation, after taking into account various aspects, awarded Rs. 86,000/- compensation to the widow along with 50% penalty. Aggrieved from this decision, employer has come in appeal.

3. Learned counsel for the appellant has submitted that the appellant was not keeping any pesticide in the poultry farm and in absence of any evidence to prove that the deceased was spraying pesticide at the relevant time, the appellant cannot be fastened with the liability to pay the compensation.

4. On the other hand, learned advocate

representing the original claimants has submitted that the deceased was spraying pesticide in the poultry farm at the relevant time and while spraying pesticide, he inhaled toxic fumes and was taken to the hospital, however he succumbed to the injuries. He has further argued that the appellant has failed to appear before the Commissioner despite service of notice, however, after the decision on 4.10.2000, he preferred Review Application which came to be rejected on 25.11.2002. He has prayed for dismissal of this appeal.

5. This court has considered the submissions of both the sides. The employment of the deceased with the appellant is not in dispute, rather he was allotted quarter in the premises of the poultry farm where he was staying with his wife and children. It is also not in dispute that at the relevant time, he inhaled certain fumes of pesticide. It is argued by the appellant that such pesticide has been consumed by the deceased at his own and no such pesticide was being kept in the poultry farm. This contention has been rebutted by the original claimants on the other hand that there was no reason for the deceased to have consumed pesticide as his wife was one of the person who has taken the deceased to the hospital. Apart from his wife, the present appellant also accompanied the deceased to the hospital. It will be relevant to note that

despite service, the appellant preferred to abstained from appearing before the Commissioner, however, after decision, preferred the review application. In absence of any evidence, this Court is not inclined to accept the contention of the learned counsel for the appellant that employer was not responsible or the workman has consumed fumes of pesticide at his own.

6. Resultantly, this appeal being devoid of any merits, is dismissed. The amount of compensation awarded by the Commissioner has been deposited before the Commissioner for Workmen's Compensation by the appellant. This amount be disbursed to the claimants along with interest accrued thereon, forthwith.

7. Since the main appeal is dismissed, Civil Application NO. 10949 of 2006 stands dismissed accordingly.