

(1989) 01 RAJ CK 0005
In the Rajasthan High Court

Mehta Printing Industries

APPELLANT

Vs

Leela Devi

RESPONDENT

Date of Decision : 09-01-1989

Acts Referred:

Employees Compensation Act, 1923 — Section 12, 30
Evidence Act, 1872 — Section 35

Citation : (1989) 2 ACC 170

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Judgement

N.C. Sharma, J.—This is an appeal u/s 30 of the Work-men Compensation Act, 1923, by M/s. Mehta Printing Industries against the judgment dated May S, 1987 passed by the Workmen's Compensation Commissioner, Pali.

2. Facts in brief are that on November 29, 1984, respondent Lila Devi filed an application before the Workmen Commissioner, Pali, for grant of compensation on account of the personal injury sustained by her due to the death of her husband Balkishan in the course of his employment with the appellant. It was alleged by Lila Devi that her husband Balkishan was a workman employed by the appellant on October 6, 1984. Balkishan died on that as he fell in the well during the course of his employment with the appellant, as his duty was to maintain the pipe connecting the well. The monthly wages of the deceased were stated to be Rs. 900/- per month and he was 26 years of age at the time of his death.

3. The claim of Lila Devi was contested by the appellant who denied the employment of Balkishan with it. It was pleaded by the appellant that he carried on his cloth printing business in the premises of Sunder Devi, which he had taken on rent. It was alleged that one Gyanchand Bhandari had undertaken to repair the pipefitting connecting the well. This well did not belong to the appellant. According to the appellant, Balkishan was in an employment under Gyanchand Bhandari and, therefore, the appellant was not liable for any compensation arising on account of his death during the course of his employment under

Gyanchand Bhandari.

4. The Workmen Compensation Commissioner framed five issues in the case. He came to the conclusion that Balkishan was in employment under the appellant. It was found that the appellant used the water from the well in the premises of Smt. Sunder Devi for his printing business purpose. It was stated that Sunder Devi supplied water to the appellant as party of her trade and the appellant was an agent of Sunder Devi when he got the tube well repaired through Gyanchand Bhandari. On these facts also, it was found that Balkishan was a workman under the appellant. The age of Balkishan at the time of his death was held to be 26 years and his wages were found to be Rs. 30/- per day. Workmen Compensation Commissioner determined the compensation amount at Rs. 67,167.30p. and made the same payable with interest at 6% p.a. to be calculated from October 6, 1984. M/s. Mehta Printing Industries has come in appeal against the judgment.

5. It was urged by the learned Counsel for the appellant that there was no evidence to establish that Balkishan was a workman in employment under the appellant. It was contended that the burden of proof was on the respondent to establish that Balkishan was an employee of the appellant, which she has failed to discharge. It was also urged that the respondent herself had produced a certified copy of the first information report lodged by Gyanchand Bhandari on October 6, 1984 and in this first information report Gyanchand Bhandari had mentioned that Balkishan was in his employment on a daily wage of Rs. 15/- and he died while he was working in the employment of Gyanchand Bhandari.

6. As against this, the learned Counsel for the respondent urged that by virtue of first proviso to Section 30(1) of the Workmen Compensation Act, no appeal lies against any order unless a substantial question of law was involved in the appeal and according to him, in the instant case no substantial question of law was involved and, therefore, this appeal was not maintainable. It was also urged that even if it is taken that Balkishan was employed by Gyanchand Bhandari, the latter was a contractor and the principal was the appellant and on account of the provisions contained in Section 12 of the Act, the appellant was still liable to pay compensation.

7. It is true that no appeal lies against any order mentioned in Sub-section (1) of Section 30 of the Act unless a substantial question of law is involved. However, it is a case in which a material document has been completely ignored by the Workmen Compensation Commissioner Pali. That material document is a first information report, which had been lodged by Gyanchand Bhandari on October 6, 1984 itself. It is true that this first information report was not put to Gyanchand Bhandari by the respondent when he was examined on her behalf. However, it cannot be disputed that this certified copy of the first information report was produced by the respondent herself before the Workmen Compensation Commissioner on March 25, 1985. It has been held in Chittar Singh Vs. Emperor that technically speaking a first information report taken down by a Police Officer amounts an entry in an official record, stating a fact in issue or a relevant fact

and made by a public servant in the discharge of his official duty and in the performance of a duty specially enjoined by law, under which such record is kept and, therefore, falls within the scope of Section 35 Evidence Act. In *Panchanan Mondal v. The State* reported in 1971 Criminal Law Journal 875 it was held that the accused was entitled to get certified copy of the first information report which was a public document. That being so, the first information report did not require formal proof. In this first information report Gyanchand Bhandari mentioned that he carried on the work of pipefitting. He had taken a contract from Parasmal Proprietor of M/s. Mehta Printing Industries for fitting pipeline. Balkishan was employee with him for this work on a daily wage of Rs. 15/-. Balkishan and Baboo Bharti were working on the pipeline. However Balkishan did not return and he sent Baboo Bharti to find out about him. Baboo Bharti returned and reported to him that Balkishan had fallen down in the well. This first information report goes to show that Balkishan was as a matter of fact in the employment of Gyanchand Bhandari on a daily wage of Rs. 15/-. Gyanchand Bhandari has undertaken a contract with the appellant. To repair the pipe line and it was during the course of his employment with Gyanchand Bhandari that Balkishan fell in the well and died. This was an important document to be taken into consideration by the Workmen Compensation Commissioner. As a matter of fact, the respondent had not adduced any evidence to show that deceased Balkishan was an employee directly under the appellant on a monthly salary of Rs. 900/-. No appointment letter was produced. No document or account-books were summoned and got produced from the appellant to show the employment of Balkishan with the appellant and payment of wages by him. The respondent herself showed ignorance in her cross-examination if Balkishan was working under Gyanchand Bhandari. Gyanchand Bhandari was examined, but since he was himself the lodger of the first information report, he conveniently and for his own safety avoided to state the true facts. However, Gyanchand admitted that he had done pipe work at the factory of the appellant. The version of the appellant with Balkishan was an employee of Gyanchand Bhandari amply finds support from the contemporary document i.e. the first information report. When such important evidence is ignored a substantial question of law arises and an appeal would lie.

8. With regard to the liability of the principal u/s 12 put forward by the learned Counsel for the respondent, the counsel for the appellant urged that it was not the case of the respondent that deceased Balkishan was under employment of a contractor who was engaged in a work which was ordinarily a part of the trade or business of the principal. The learned Counsel for the appellant urged that Parasmal has stated in his statement that Gyanchand had been engaged by him for pipe fitting work at the instance of the owner of the premises, namely, Sunder Devi. He also stated that he had himself made payment of the bills given by Gyanchand Bhandari but the amounts paid of the bills Ex. D.A. 1 to Ex. D.A. 3 were adjusted in the account of Sunder Devi. Since this aspect of the matter was not examined by the Workmen's Compensation Commissioner for the reason

that there were no pleadings of the respondent on this line, it appears proper that the respondent should be given liberty to suitably amend his application and the appellant should be given an opportunity to meet with such a case as advanced during the course of arguments and after taking evidence, the Workmen Compensation Commissioner should give its findings whether the appellant was a principal or whether he in the course and for the purpose of his trade or business contracted with Gyanchand Bhandari for the execution by the latter of the whole or any part of the work which was ordinarily a part of the trade of business of the appellant.

9. I, therefore, allow this appeal set aside the judgment of the Workmen Compensation Commissioner, Pali dated May, 5, 1987, and remand the case to him with the direction that he may allow respondent Lila Devi to amend her application, if she so likes, and then after giving the appellant an opportunity of filing reply thereto, take further evidence in the case and decide whether the case is covered by Section 12 of the Workmen Compensation Act and in case he finds this question in the affirmative, to decide the matter in accordance with law.