

(2017) 02 UK CK 0016
In the Uttarakhand High Court
Case No : 2 of 2010 (M of S)

M/s Regency Health Care

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

[Employees Compensation Act, 1923](#), [Section 20](#), [Section 10](#), [Section 30](#), [Section 10A](#), [Section 10A\(4\)](#)

Citation : (2017) 02 UK CK 0016

Hon'ble Judges : V.K. Bist

Bench : Single Bench

Advocate : Vipul Sharma, ?Gajendra Tripathi, ?M.C. Kandpal, ?Chitrarth Kandpal

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.
2. Petitioner has challenged the order dated 11.09.2009 passed by Deputy Labour Commissioner, Kumaon Range, Haldwani, Nainital whereby the petitioner has been directed to pay compensation of Rs. 4,05,457/- to respondent no. 6. Petitioner has also challenged the recovery citation dated 16.11.2009.
3. Petitioner (M/s Regency Health Care) is the manufacturer of medicine. It has less than twenty employees. Petitioner is a partnership firm, duly registered under the Partnership Act and also registered under the provisions of

Indian Factories Act and Rules. On 30.05.2009, a notice under section 10 of the Employees' Compensation Act (hereinafter referred as the Act) was issued to the petitioner stating therein that it had come to the knowledge of respondent no. 3 that on 29.05.2009, during the course of employment, one workman, namely, Satish Kumar aged 30 years had died. It is further written in the notice that since the petitioner was the employer, therefore, he is liable to pay a sum of Rs. 3,74,364/- as compensation to respondent no. 6 and the said amount was to be deposited in the court of Deputy Labour Commissioner. After receiving said notice, the petitioner in his reply stated that he had no connection with the person, namely, Satish Kumar as he was not the workman in the petitioner's unit, therefore, he was not covered under the definition of workman. Thereafter, on 11.09.2009 the order impugned was passed, whereby the petitioner was directed to pay a sum of Rs. 4,05,457/- to the respondent no. 6 as compensation. On 11.02.2009 recovery citation was also issued. Against the said orders, writ petition was filed.

4. Learned counsel for the petitioner by relying on Section 10(A) of the Act, submits that after receiving information from any source about the death of workman, it is the duty of the Commissioner to send notice by the registered post to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of death. It is the submission of the learned counsel for the petitioner that this was not done by the Commissioner;

therefore, order impugned is bad in law. It is further submitted that no determination of compensation under section 10-A of the Act can be done in accordance with the provision of law and respondent no. 2 acted illegal and unjustifiably by issuing recovery letter for alleged payment of compensation of Rs. 4,05,457/- to legal heirs of deceased (Satish Kumar). He further submitted that the direction to pay the compensation can only be issued by passing order under Section 20 of the Act.

5. Learned counsel for the petitioner further submits that in the present case, no information as provided under Section 10A (4) of the Act, was given to the respondent no. 6 by the Commissioner; therefore, the order impugned cannot be said a valid order and deserves to be set aside. He submits that no claim was filed by respondent no. 6. It is also submitted that before passing order for grant of compensation, proper adjudication should be done, which has not been done in the present case.

6. Shri M.C. Kandpal, learned Senior Counsel for respondent no. 6 submits that first of all the petition is not maintainable, as the petitioner has alternative remedy under section 30 of the Act. He further submitted that there is mandatory provision of depositing the entire amount before filing of the appeal and for avoiding the same, appeal was not filed and instant writ petition is filed. Learned Senior Counsel further submitted that, in fact, son of respondent no. 6 was the employee of the petitioner, and therefore, the award of compensation has rightly been awarded in favour of the petitioner. Learned Senior Counsel further submitted that it is admitted that son of respondent no. 6 had died in the premises of the petitioner's factory. It is also submitted that the

Commissioner got enquiry conducted and thereafter also heard the petitioner before passing the order. He submitted that there is no illegality in the order impugned and writ petition deserves to be dismissed.

7. I have considered the submission of the learned counsel for the parties.

8. Section 10A of the Act provides power to require from employers statements regarding fatal accidents. This section is being reproduced below:-

"Where a Commissioner receives information from any source that [an employee] has died as a result of an accident arising out of and in the course of his employment, he may send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the [employee], and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death."

From the reading of the above section, it is clear that the section only provides for informing the employers about the accident and asking him to submit his statement in the prescribed form, giving the circumstances attending the death of the employee. Further Sub-Section (4) of Section 10A of the Act provides that if the employer has disclaimed liability, the Commissioner is required to inform the dependants of the deceased that it is open for them to prefer a claim for

compensation before the Commissioner. Sub-Section (4) of Section 10A of the Act read as follows:-

"Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased [employee] that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit."

9. In the present case, I find that neither provision of Section 10A (1) of the Act, nor provision of Sub-Section 4 of Section 10A of the Act have been complied. I find that even the claim petition for compensation was not filed by respondent no. 6 before the Commissioner. The Commissioner himself asked for the report and it appears that on the basis of the report, the award has been passed. In such circumstances, filing of appeal is not necessary. From the perusal of the order as well as from the perusal of the record, it is clear that there is no adjudication in the matter. It is obligatory on the part of the Commissioner to follow the procedure in proper manner, which has been prescribed under Section 10A(1) and Sub-Section 4 of Section 10A of the Act. Same has not been followed. Since, neither any claim petition was filed by the respondent no. 6, nor there is any adjudication in the claim the Commissioner committed error in passing the order for award of compensation.

11. Accordingly, the writ petition is allowed. Order dated 11.09.2009 and recovery citation dated 16.11.2009 are hereby quashed. However, respondent no. 6 is permitted to file claim for compensation before the Labour Commissioner. In

case, such claim is filed, the Labour Commissioner is directed to take a decision on the same in accordance with law within a period of two months from the date of production of the certified copy of the order; keeping in mind that respondent no. 6 is 80 years old.

12. No order as to cost.