
(1959) 12 AHC CK 0007
In the Allahabad High Court
Case No : F.A.F.O. No. 200 of 1954

Municipal Board, Almora

APPELLANT

Vs

Jasod Singh and Another

RESPONDENT

Date of Decision : 24-12-1959

Acts Referred:

Workmens Compensation Act, 1923 — Section 12, 2

Citation : AIR 1960 All 468 : (1960) 30 AWR 204 : (1960) RD 151

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : L.M. Pant, N.D. Pant, for the Appellant; L.D. Joshi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is an appeal by the Municipal Board, Almora against an order of the Deputy Commissioner, Almora sitting as Commissioner under the Workmen's Compensation Act awarding a sum of Rs. 1,260/- as compensation to a workman Jasod Singh who is respondent No. 1 in this appeal and the second respondent being the State of Uttar Pradesh. The facts leading up to this appeal are as follows :

2. A project for the electrification of the town of Almora was being executed by the U. P. Government on the material date. The workman Jasod Singh was one of the employees engaged in this work. His duty was to assist in the installation of poles and overhead cables. On 20-11-1950, while working on a pole he fell down and received injuries resulting in his permanent partial disability. He made an application for compensation u/s 3 of the Workmen's Compensation Act, claiming Rs. 2,520/-. The Municipal Board and the State were made defendants.

3. Both of them contested the claim on merits and, in the alternative, each pleaded that the other was liable to pay compensation. The State contended that it was executing the project only as an agent of the Municipal Board which alone

was liable for compensation. On the other hand, the Municipal Board pleaded that the work was not being constructed by the State on behalf of the Board.

4. The Commissioner rejected the case of both defendants that the workman was not entitled to compensation. He held that Jasod Singh was ordered to go up the electric pole in the course of his duties and that he received an electric shock which caused him to fall down. He held that he had received injuries in the discharge of duties during his employment which resulted in permanent partial disability. He assessed the compensation at Rs. 1,260/-.

5. On the question whether the Municipal Board or the State was liable to pay the compensation, the Commissioner held that the Local Self-Government Engineering Department (hereinafter called L.S.G.E.D.) had been executing the work for the Municipal Board, Almora and for the Board's benefit. Accordingly, he held the Municipal Board alone to be liable for the compensation. Aggrieved by this decision the Board has come to this Court in appeal.

6. In this appeal the right of the workman to receive compensation is not in dispute, and the only question is whether the appellant Board is liable or the respondent the State of Uttar Pradesh. After hearing learned counsel for the parties I am of the opinion that, not the Board, but the State is liable.

7. Under the Act an employer is liable to pay compensation for any personal injury caused to a workman by accident in the course of his employment. The word "employer" has been defined in Section 2(e) as follows :

"Section 2(e) : "employer" includes any body of persons, whether incorporated or not, and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him."

(7A) Mr. N.D. Pant, who argued the case for the State with ability and tenacity, contended that this definition includes a managing agent and would, therefore, cover the Municipal Board and thus absolve the Government from liability in the present case. Learned counsel conceded that Jasod Singh, at the time of the accident, was an employee of the State, but argued that, as the State itself was the agent of the Municipal Board, it was absolved from liability in this case. I do not agree. The definition of an employer is not exhaustive. The words used are "Employer includesany managing agent". It is, therefore, immaterial whether the State was working for itself or on behalf of the Municipal Board. Even if it was constructing the project as the agent of the Board, it would be liable to an injured workman. Whether it is entitled to reimburse itself from the principal is another matter which does not arise in this appeal.

8. The Municipal Board may or may not be liable to reimburse its agent, the State of Uttar Pradesh, for the compensation to be paid by the latter to Jasod

Singh in consequence of his injury. This is a matter on which I shall not give any opinion. But it is clear that the Board is not liable unless it comes within the definition of "employer" or is otherwise liable under any other provision of the Act. Mr. Pant relied upon Section 12(1) of the Act in support of his argument that the Board is liable as principal. That sub-section runs as follows :

"12: Contracting : (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed".

9. Mr. Pant contended that the Municipal Board, Almora had contracted with the L.S.G.E.D. for the execution of a work which is ordinarily part of the trade or business of a Municipal Board u/s 7 (1) (a) of the U. P. Municipalities Act to make reasonable provision for lighting public streets and places and, under Clause (j) to provide a sufficient supply of pure and wholesome water where the inhabitants of the locality are endangered by the insufficiency or unwholesomeness of the existing supply. The respondent had to construct electric installations to enable it to perform its ordinary business and, therefore, the construction was also a part of that business. As the Board had contracted with the Government for the execution of the project, it is liable to pay to the injured workman the compensation exactly as if he had been immediately employed by it. This in brief is Mr. Pant's contention.

10. I cannot agree. In my opinion, it is not the ordinary trade or business of a Municipal Board to execute electrical projects. There is a distinction between lighting public streets and places or providing a water supply on the one hand and on the other the construction of projects which, when ready, will enable the Board to perform those functions. It is common knowledge that Municipal Boards do not construct buildings and projects themselves but entrust them to contractors. It is not the ordinary trade or business of a Municipal Board to make constructions.

11. A somewhat similar point arose before the Bombay High Court in *Rabia Mahomed Tahir Vs. G.I.P. Railway*, . In that case the G. I. P. Railway had entrusted the work of constructing a transmission line to a contractor. The overhead cable had to be carried over steel towers. A workman who had been engaged for the constructions in one of these towers, was knocked down by an approaching train and killed. The tower was to be used for carrying the cable

from the Kalyan power station to various Sub-stations on the Railway and the cable line was to be used for supplying power to sub-stations. The question arose whether the Rail way was liable to pay the compensation u/s 12 of the Compensation Act. The Court held that though the construction of the towers would be necessary to convey electric power to the locomotives, it was not a part of the ordinary trade or business of the G. I. P. Railway to carry out works of construction.

12. The Calcutta High Court took a similar view in *Karnani Industrial Bank Ltd. Vs. Ranjan*, . In that case a Bank had entrusted the construction of a building required by it to a contractor. A workman was injured in the course of this work by a joist falling on his leg and the Commissioner fixed the compensation payable to him at Rs. 540/-. The question arose whether the Bank was liable u/s 12 to pay this compensation. The High Court held that it was not within the ordinary trade or business of a Bank to build houses.

13. The principles laid down in these decisions would apply to a Municipal Board which entrusts to the Government the construction of an electrical project which would enable it to electrify the Municipal area or to render other services. The" supply of electricity within the Municipal area may be within the ordinary course of the business or trade of the Municipal Board but not the execution of the project which, when completed, will enable the Board in supply this service. For these reasons I hold that the finding of the Commissioner holding the Municipal Board liable is erroneous.

14. The appeal is, therefore, allowed with costs.

15. I have now to consider the proper order to be passed in this case. The amount of compensation paid by the Board has already been withdrawn by the workman Jasod Singh. In view of the finding of this Court, I award a sum of Rs. 1,260/- as compensation to Jasod Singh to be paid by the respondent State of Uttar Pradesh. As the workman has already been paid, he shall not be entitled to withdraw this amount, which shall be paid to the Municipal Board, Almora in lieu of the sum which they are entitled to withdraw as a result of the decision in this appeal. Jasod Singh need not refund the money drawn by him. It is made clear that this order does not decide the question of the right, if any, of the State of Uttar Pradesh to be reimbursed by the Municipal Board, Almora.