

(2004) 12 OHC CK 0025
In the Orissa High Court
Case No : FAO.Nos. 46 and 156 of 2003

Principal Chief Conservator of Forest and Another	APPELLANT
Vs	
Sachala Majhi	RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Citation : (2005) 2 ACC 695 : (2006) ACJ 1428 : (2005) 105 FLR 47 : (2005) 1 OLR 137

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Addl. Government in FAO No. 46/2003 and R. Mishra, L.M. Nanda and A. Das, in FAO No. 156 of 2003, for the Appellant; L.M. Nanda in FAO No. 46/2003 and Addl. Government Advs. in FAO No. 156/2003, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The aforesaid two appeals are directed against the award passed by the Commissioner under Workmen's Compensation Act in W.C. Case No. 27 of 2000 directing payment of Rs. 1,42,680/- as compensation.

2. FAO No. 46 of 2003 has been filed by the opposite parties in the W.C. case challenging the award, whereas FAO No. 156 of 2003 has been filed by the claimant for enhancement of the compensation amount as well as for grant of interest.

3. As it appears from the record, the claimant who is wife of the deceased-Bhagaban Majhi filed an application before the Commissioner, Workmen's Compensation, Angul claiming compensation on the ground of death of her husband while on duty. Case of the claimant is that her deceased-husband Bhagaban Majhi was working as Forest Guard in Angul Forest Division. On 25.4.1999 morning while he along with Forester Jayakrishna Garnaik were returning to Range Office in a motorcycle, he was assaulted to death by a group of people involved in commission of forest offences. Since death took place in

course of employment, an application for payment of compensation was filed claiming Rs. 1,80,000/-. The Commissioner, Workmen's Compensation having awarded Rs. 1,42,680/- in the impugned award, FAO No. 46 of 2003 has been filed by the present appellants.

Learned counsel for the State appearing for the appellants challenged the award basically on two grounds : (1) The deceased on the date of occurrence was working as Forest Guard and as such is not a "workman" as defined under the Act and therefore no compensation could be allowed. (2) The claimant had been granted ex gratia for death of her husband while on duty apart from the family pension. It is also stand of the appellants that son of the deceased has already been given an appointment as Bungalow Choukidar. In view of the above, the claimant is not entitled to any compensation.

4. Learned counsel appearing for the claimant, on the other hand, submitted that as per the decision of this Court the deceased has to be treated as a workman as defined under the Act and he having died in course of employment, his wife is entitled to the claim. In respect of the appeal filed by the claimant, learned counsel appearing for the claimant confined his argument only for grant of interest as provided in the statute.

5. Learned Additional Government Advocate drew attention of the Court to the award itself and submitted that there is no dispute that after death of Bhagaban Majhi, the claimant has been given ex gratia of rupees fifty thousand. There is also no dispute that she is drawing special family pension with effect from 26.4.1999 and eldest son of the deceased-Bhagaban Majhi has been appointed as Bungalow Choukidar. According to the learned Additional Government Advocate the benefits extended to the claimant can be treated as adequate compensation. Apart from the above, it was also contended that the deceased was working as Forest Guard and there is no material on record to show that he comes under the definition of "workmen" under the amended provision and therefore the petition filed claiming compensation was not maintainable.

6. After amendment of the Act, the word "Forestry" has been inserted as Item No. XXIX in Schedule-II and prescribes that whoever is employed in horticulture operation, forestry, bee keeping or farming is a workman. Under the Orissa Forest Department Code, 1979 as quoted in the judgment of the Commissioner, Workmen's Compensation, the duty of a Forest Guard is to see that the provisions of the Wild Life (Protection) Act, 1972 and Rules framed thereunder are observed and to put a stop to illegal shooting and trapping. He is also required to patrol the forest to prevent offences. It also appears that this Court in the case of Divisional Forest Officer and Others Vs. Noniar Bibi and Others, has taken a view that a Forest Guard depending upon the nature of job discharged by him can be brought within the definition of workman. Admittedly, in the present case, the deceased Bhagaban Majhi was on duty on the date of occurrence and while he was travelling along with another officer in a motor-cycle he was assaulted to death. The claimant has examined herself as P.W. 1 in the case. In

her deposition, she has stated that the deceased was staying inside the Forest and was discharging his duties. On 24.4.1999 the day before the date of occurrence while on duty he seized some timber from forest; thieves along with buffalos and kept the same in beat. Thereafter he came to Range Office and informed the Range Officer about the seizure and for necessary action and went back to Tuluka beat along with the APR force for transportation of the seized materials to the Range Office. On 25.4.1999 morning the APR force brought the seized articles to the Range Office and the deceased and Forester Jayakrishna Garnaik followed the APR force by a motor-cycle. On the way they were attacked by the offenders and while Jayakrishna Garnaik escaped, Bhagaban Majhi was killed. Nothing has been brought out in cross-examination to disbelieve the evidence of this witness. It is, therefore, clear that the deceased was engaged in preventing commission of forest offences and while on duty he was killed by the offenders. I, therefore, do not find any reason as to why he shall not be treated as a workman as defined under the Act. The decision of this Court in the case of D.F.O. and Ors. v. Noriar Bibi and Ors. (supra) fully supports the case of the claimant. I, therefore, do not find any illegality in the award passed by the Commissioner, Workmen's Compensation.

7. So far as second point raised by the learned Additional Government Advocate is concerned, it also relates to the appeal filed by the claimant for grant of interest. Claimant has filed FAO No. 156 of 2003 claiming interest on the awarded amount. There is no dispute that after death of Bhagaban Majhi, claimant has been granted ex gratia of rupees fifty thousand and has also been allowed special family pension of Rs. 3100/- with effect from 26.4.1999 and she has been allowed to draw family pension till 31.10.2002. Apart from the above, eldest son of the deceased has also been given appointment as Bungalow Choukidar. In this way, the family of the deceased has also been compensated to a large extent. I, therefore, do not find any reason to allow interest on the awarded amount.

8. Accordingly, both the appeals fail having no merit and are dismissed.