

RESPONDENT

Final Decision : Dismissed

3. Mr. Ashutosh Anand, learned Counsel appearing for the appellant, assailed the

impugned award as being illegal and without jurisdiction. Learned Counsel submitted that the Commissioner erred in law in allowing the application for compensation and condoning the delay in filing application without assigning any reason. Learned Counsel submitted that the claimants failed to discharge their onus of proving the case by leading oral and documentary evidence. Learned Counsel submitted that in absence of any material in support of their case of the claimants that the death of the deceased arose out of and in course of employment, the order directing compensation is illegal and liable to be set aside. Learned Counsel put reliance on a decision of the Supreme Court in the case of *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali* 2007) 11 S.C.C. 668.

4. Admittedly, the deceased was in the employment of the appellant-Bharat Coking Coal Limited and was working as Miner/Loader and was posted as Bhowra Area colliery. From perusal of the Lower Court Records, it appears that in the claim application, it was categorically pleaded that the deceased while working under the appellant, sustained injuries and died in the factory. A separate application for condonation of delay in filing the claim application was filed. In the written statement filed by the appellants, it was as stated that the workman has not lost his life due to negligence of the appellant. Hence, they are not liable for payment of any compensation. There is no categorical pleading of denial from the side of the appellants that the deceased has not died in the factory premises. There is also no specific pleading that the deceased has not died during his working hour. Moreover, the relationship of employer-employees has been disputed.

5. The Commissioner, Workmen's Compensation, Dhanbad in the impugned order has mentioned that he has considered the post mortem report wherein it is mentioned that the cause of death of the deceased is due to falling down in the ditch within the factory premises. The Commissioner also mentioned about the criminal case instituted being Case No. 19 of 1995 showing that the deceased died while working in the factory premises and falling down in the ditch. No evidence was adduced by the employer in support of their cases that the accident did not take place in course of employment. On the contrary, because of death of the deceased, Faizure Rahman, his brother was provided employment.

6. In the case of *Shakuntala Chandrakant Shreshti* (supra) the fact of the case was that the deceased while working as a cleaner in the vehicle, suddenly developed chest pain while driving the said vehicle and died. The autopsy was conducted where the cause of death was opined as cardiac arrest. The question before the Supreme Court was whether the deceased died in an accidental injury in the course of out of employment, their Lordships observed that injury suffered should be a physiological injury. Their Lordships further observed:

15. ...The said Act was enacted to provide for payment by certain classes of employers to workmen for compensation against injury by accident. The term "accidental injury" has not been defined under the Act. The liability of the

employer for payment of compensation, however, would arise if a personal injury is caused to a workman by accident arising out of and in the course of his employment. What is necessary for attracting the charging provision contained in Section 3 of the Act is that (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of or in the course of his employment.

7. In the instant case, admittedly the deceased fell down in a ditch within the factory premises while he was in the factory in course of his employment and because of that the deceased sustained injuries and died. In my considered opinion, therefore, claimants are entitled to get compensation under the Workmen Compensation Act.

8. For the aforesaid reason, there is no merit in this appeal, which is, accordingly, dismissed.