

(2000) 08 OHC CK 0020

In the Orissa High Court

Case No : M.A. No's. 581, 582 and 583 of 1996

Sarat Chandra Rout

APPELLANT

Vs

Hrushi Patra and Others

RESPONDENT

Date of Decision : 19-08-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2001) 1 ACC 43 : (2000) 90 CLT 378 : (2001) 88 FLR 324 : (2001) 1 LLJ 1313

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : G.C. Patnaik, S.R. Patnaik, N.P. Parija, L. Mishra and K.K. Jena, for the Appellant; S.K. Mohanty, S. Mohanty and S. Devi for Respondent No. 1, B.K. Patnaik, P. Sinha, S.K. Patnaik, P.C. Nayak and Smt. S. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—These three appeals u/s 30 of the Workmen's Compensation Act, 1923, are directed against the common decision passed by the Deputy Labour Commissioner and Commissioner for Workmen's Compensation, Rourkela (in short, the "Commissioner") in three different claim cases, awarding compensation to claimant-respondent No. 1 in each of the appeals.

The present appellant had been engaged as Contractor under the Executive Engineer, P.W.D. Keonjhar, for repair and extension of the Settlement Officer building at Keonjhar. While the work was in progress on June 24, 1987, suddenly there was heavy rain and storm forcing the three labourers to take shelter in a nearby building along with unused cement bags. At that time, the overhead live electric wire fell on the labourers causing injuries which ultimately resulted in death of two of the labourers. Two claim applications were filed by the legal heir-cum-dependants of two labourers and the third claim case was filed by the injured labourer herself.

2. The Commissioner found that the labourers were workmen under the present appellant who had been engaged as a Contractor by the Executive Engineer. Accordingly, the Commissioner directed payment of compensation to the claimants by the Executive Engineer, as the Executive Engineer was the principal employer, with the observation that the Contractor, namely the present appellant to reimburse the amount to the Executive Engineer.

3. The Contractor in these appeals has contended that the injuries were sustained due to negligent act of the Orissa State Electricity Board (now Grid Corporation) and the liability, if any, should be borne by such Grid Corporation. In Miscellaneous Appeal No. 582/1996 and Miscellaneous Appeal No. 583/1996 the Grid Corporation, impleaded as respondent No. 3, has entered appearance. It has been submitted on behalf of the Grid Corporation that since Grid Corporation is not the "employer", it has no liability in the matter under the provisions contained in the Workmen's Compensation Act.

4. In view of the findings of the Commissioner there is no escape from the conclusion that the three labourers were the workmen under the present appellant. The main contention of the appellant to the effect that the accident occurred due to negligence of the Orissa State Electricity Board (now Grid Corporation) cannot be accepted in a proceeding under the Workmen's Compensation Act. The compensation granted in accordance with the provisions of the Workmen's Compensation Act is not based on any negligent action of anybody. If it is found that the injuries have been sustained in an accident arising out of and in course of employment, the employer is liable to pay compensation and under certain circumstances, the principal employer is also liable to pay compensation. Applying the aforesaid principles, the Commissioner had rightly directed the principal employer, that is to say, the Executive Engineer, to pay the compensation and the Contractor to reimburse the same to the Executive Engineer.

5. The question of liability of the Grid Corporation on account of any negligence on its part is to be determined in forum contemplated under the Workmen's Compensation Act. However, this would not stand in the way of the present appellant seeking reimbursement from the Grid Corporation on the ground that the negligent action of the Grid Corporation has led to the accident and such action has to be determined in ordinary Civil Court. It is, however made clear that no opinion has been expressed on this aspect and if any such action is brought, the matter has to be decided in accordance with law.

6. The learned counsel for the appellant also contended that the labourers had left the work site and gone to a nearby building and it cannot be said that the injuries were sustained in an accident arising out of and in course of employment. In this connection, it is also contended that the injuries caused due to falling of overhead live electric wire had nothing to do with the nature of work of the labourers and as such, the accident did not arise out of the employment.

7. The materials on record clearly indicate that while the labourers were working, due to sudden rain they had to take shelter in the nearby building along with the unused cement bags. It cannot be said that the labourers had stopped working. On the other hand, while the work was in progress, they were forced to take shelter in the nearby building along with the unused cement bags. In such a background, it cannot be said that the accident was not in course of employment.

8. The contention of the learned counsel for the appellant that the accident did not arise out of the employment is equally untenable. The workers had gone to the nearby building not only to protect themselves from rain, but also to protect the unused cement bags. In other words, they happened to be at the place of accident in connection with their work as labourers. Their action in taking the cement bags to the nearby building had close nexus with the nature of their work and they exposed themselves to the added peril in connection with the work of the Contractor. Thus, applying the principles of law recognised in several decisions of the Supreme Court including those reported in *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, and Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, it can be said that they had sustained the injuries in an accident arising out of the employment. In almost similar circumstances, in the decision *State of Punjab and Others Vs. Vidya Devi and Others*, where injuries had been sustained due to the workman coming in contact with the electric wire, it had been held that the compensation was payable as the accident had arisen out of and in course of employment.

9. For the aforesaid reasons, I do not find any merit in these appeals which are dismissed subject to the observations made above. There will be no order as to costs.