

(1988) 12 OHC CK 0010
In the Orissa High Court

Sardar Singh

APPELLANT

Vs

Haridas Mohananda and Another

RESPONDENT

Date of Decision : 08-12-1988

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 30

Citation : (1989) 1 ACC 421

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Judgement

S.C. Mohapatra, J.—This is an appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act").

2. An application was filed before the Commissioner under the Act for compensation by the Respondent alleging that on 19-6-1981 while he was engaged as a mason for construction of the building of the appellant he was injured on account of contact with electrical current through an iron rod coming in contact with the overhead electric line as a result of which, his left hand was amputated. It is claimed that notice for settlement was given to the appellant but the appellant did not respond.

3. After notice, appellant denied to have employed the respondent and denied to be constructing any building during that period and stated that he was away from Orissa at Bombay during that period and had no chance of engaging the respondent.

4. Respondent examined live witnesses and produced two documents in support of his assertion. Appellant examined five witnesses to disprove the assertion of the respondent. Commissioner on consideration of the materials on record held that the respondent was engaged as a mason by the appellant who sustained injuries in course of and arising out of the employment on 19-6-1981 resulting in amputation of his left hand. Accordingly, compensation having been awarded, this appeal has been filed.

5. Amount of compensation awarded for the nature of the injuries is not disputed by the learned Counsel for the appellant. It is urged that on a consideration of the materials on record no finding could have been reasonably given that the respondent was employed by the appellant. Commissioner has relied upon the evidence of P.Ws. 1, 2 and 3 to find that the respondent was engaged as a mason on the date of accident and in course of his employment and arising out of such employment he sustained injuries. Whether evidence of the witnesses would be accepted is a pure question of appreciation by the Commissioner and a finding arrived at on appreciation of such evidence is a pure question of fact. On perusal of evidence, I am satisfied that the finding cannot be said to be unreasonable.

6. It is next urged that the Commissioner could not have awarded compensation without determining whether the respondent is a workman. It was brought to my notice that in the application for compensation respondent wanted that the Commissioner is to decide whether the respondent is a workman. Non-consideration of a question which is required to be considered for exercise of jurisdiction is non-compliance with the provisions of law and is thus, a question of law arising out of the order. The award of compensation by the Commissioner is thus, vitiated and is liable to be set aside. Claimant, however, ought not to suffer on that account where materials are available on record this Court in appeal can also consider the same to determine whether the claimant is a workman.

7. "Workman" has been defined in Section 2(1)(n) of the Act to mean a person who is employed in such capacity as specified in Schedule-II whereunder Clause (viii), a person who is employed in the construction, of any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof.

Learned counsel for the appellant submitted that there is no material available on record to bring the building within the category specified in Clause (viii) of Schedule II of the Act. It is submitted that the case of the employee as revealed in the evidence is that there was accident at a height of 10 feet from the ground level when the claimant was receiving the iron rods for binding of the frame for casting the roof also. In cross-examination, claimant stated that he was doing the work of two rooms and latrine of the ground floor. The use of the terms "ground floor" itself indicates that the building is designed to have more than one floor. In case the roof was to be cast at 10 feet from the ground level there can be no doubt that the building with more than one floor was designed to be of a height of more than 12 feet from the ground. It is to be remembered that the case of the appellant was that there was no construction of any building. Once that is disbelieved and the evidence is that there was accident at a height of 10 feet from the ground while the construction of the ground floor was going on at roof level, it can safely be inferred in the circumstances of the case that the building was designed to have more than one floor and would be of a height of

more than 12 feet. In case there would have been cross-examination in respect of this requirement, there would have been clear materials. In a benevolent statute as the Act, in the absence of specific material to take out the injured out of the category of workman, the inference would be reasonable where there are clear indications to come to the conclusion. Endeavour is to be made to give benefit to the workman than to take away the benefit where the employer does not come with a clear case. In view of the discussion above, on the facts brought to the record, I am satisfied that complainant is a workman.

8. In the result, this appeal has no merit which is accordingly, dismissed. No costs.