

(2020) 09 MP CK 0224

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2551 Of 2020

Shri Ganesh Spinner And Polyplast Ltd.

APPELLANT

Vs

Raju S/O. Lallan Prasad

RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 250

Employees Compensation Act, 1923 — 2(e), 2(f), 31

Citation : (2020) 09 MP CK 0224

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Prakhar Mohan Karpe,

Final Decision : Dismissed

Judgement

The petitioner has filed the present petition being aggrieved by the order dated 19.7.2018 and 19.2.2020 passed by Commissioner, Employees Compensation, Labour Court, Indore.

Facts of the case, in short, are as under :

The respondent while working in the factory belonging to the present petitioner met with an accident on 22.9.2005 near about at 7.30 pm. which resulted in the amputation of two fingers of his right hand. He was treated in the hospital from 22.9.2005 to 27.9.2005. At the time of the accident, he was healthy and hearty and was getting Rs.3,300/- as monthly wages. When the petitioner did not pay him the adequate amount of compensation, he approached the Commissioner under the provisions of the Employees Compensation Act (Old Workmen Compensation Act) (hereinafter referred to as "the Act" for short) by way of Case No.97/WCNF/2006 by impleading the present petitioner through owner - Shri Andram Rathi.

Learned Commissioner vide award dated 6.9.2013 assessed the compensation at Rs.1,13,230/- as per the formula given in the Act. Learned Commissioner also

awarded the interest @ 12% per annum from 22.9.2005 till its actual payment. Apart from the aforesaid amount, the Commissioner observed that the employer avoided the liability of making payment of compensation and refused to identify him, therefore, invited a penalty hence, the learned Commissioner has also awarded the penalty @ 30% on the amount of compensation.

The petitioner did not challenge the aforesaid award by filing an appeal before this court. The petitioner neither filed any appeal nor made payment to the respondent, therefore the respondent approached the Labour Court by way of execution proceedings. In the execution proceedings, he impleaded the present petitioner through its Partner - Anurag Rathi for recovery of Rs.2,60,616/-with interest.

Anurag Rathi appeared and filed the application on 14.2.2018 seeking deletion of his name from the execution proceedings and prayed that the compensation be recovered the properties of the company. The respondent filed the detailed reply of the aforesaid application by submitting that in the execution proceedings, Anurag Rathi had deposited Rs.30,000/- in three installments @ Rs.10,000/-and thereafter he has stopped depositing the amount. Earlier also, he moved similar applications and the same had been rejected in the year 2014. Hence, the present application be rejected with costs.

Vide order dated 19.7.2018, learned Commissioner has rejected the aforesaid application. Thereafter, Anurag Rathi filed an application seeking review of the order dated 19.7.2018 and that too has been rejected vide order dated 19.2.2020, hence the present petition before this Court.

Shri Prakhar Karpe, learned counsel appearing for the petitioner, submits that the learned Commissioner is wrongly proceeding the execution case against Anurag Rathi. The petitioner company had been closed down in the year 2004. The last Annual General Meeting (AGM) was held in the month of September, 2004. The amount payable by the company cannot be recovered from the Director as held by the Apex Court in the case of P.C. Agrawala V/s. Payment of Wages Inspector, M.P. & others : 2005 III CLR 845, hence the execution proceedings are liable to be dropped qua Director with a further direction to proceed and recover the amount from the assets of the company.

Heard and perused the record.

The Employees Compensation Act (old Workmen Compensation Act) is a welfare legislation. The respondent suffered permanent disablement while working in the factory of the petitioner's company in the year 2005. He approached the Commissioner for Compensation, in which, Anurag Rathi appeared as a witness and he refused to even identify the respondent despite the fact that a criminal case was registered against him in the very the same accident. Learned Commissioner has observed that the company has made all efforts to avoid the payment of compensation to the respondent, therefore, a penalty @ 30% of the amount was imposed. The petitioner company never challenged the aforesaid

award and in the execution proceedings, it has deposited only Rs.30,000/- out Rs.2,60,617/-.

Section 31 of the Act gives power to the Commissioner to recover the amount of compensation as an arrears of land revenue payable by any person under the Act. So far as closing down of the company is concerned, the company might have stopped the production, but there is no order of closure of the industry u/s. 25-O of the Industrial Disputes Act, 1947 by the appropriate government.

Learned counsel for the petitioner has placed heavy reliance over the judgment of Apex Court in the case of P.C. Agrawala (supra) in which the Apex Court was dealing with the case under the provisions of the Payment of Wages Act and in which, the industrial undertaking run by the company became sick, therefore, the apex Court has held that the Director had no personal liability for non-payment of the wages to the workmen, hence, the recovery proceedings cannot be initiated against them. The company "Jiyajirao Cotton Mills Ltd." made an application to the State Government u/s. 25-O of the Industrial Disputes Act seeking permission for closure of Cotton Section of the company. The company made a reference in the year 1992 to Board of Industrial and Financial Reconstruction (BIFR). In January, 1993, the BIFR declared the company to be a sick industry and thereafter, the issue of payment of wages was raised by the employees union. In the present case, the petitioner company has neither been declared as a sick company nor there is any permission from the Government for disclosure u/s. 25-O of the Industrial Disputes Act.

Section 2(e) of the Employees Compensation Act gives the definition of 'employer' which includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer. The word "managing agent" is also defined in Section 2(f) of the Act, which means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer. Therefore, Anurag Rathi cannot escape from his liability because he was not an employee, but he was a Director of the company. He appeared as a witness on behalf of the company before the learned Commissioner. Even this writ petition is filed by him on behalf of the company Hence, I do not find any ground to interfere in this petition.

Writ petition is dismissed without notice to the respondent .