

(1963) 05 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 141 of 1961

Smt. Raj Ran Dutt and Another

APPELLANT

Vs

Firm Narsing Das Mela Ram and Another

RESPONDENT

Date of Decision : 31-05-1963

Acts Referred:

Railways Act, 1890 — Section 3

Workmens Compensation Act, 1923 — Section 12, 2(1), 30, 30(1)

Citation : (1963) 05 P&H CK 0025

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : Anand Sarup, for the Appellant; Bhagirath Dass, for the Respondent

Judgement

Shamsheer Bahadur, J.—This is an appeal of Raj Rani on her own behalf and that of her minor daughter Shukla whose claim for compensation of Rs. 3.500/- has been dismissed by the Commissioner under the Workmen's Compensation Act.

2. Jagdev Datt husband of Raj Rani was employed for painting the premises of the shop owned by the Respondent-firm, Narsingh Das-Mela Ram, Katra Ahluwalian, Amritsar. when he died on 7th of February, 1960, three hours after having sustained an electric shock as a result of the in-juries sustained at 11-30 A.M. It is not disputed that the accident occurred while Jagdev Datt was engaged in the work of painting the premises of the shop belonging to the Respondent-firm, and it has not been contested that the death took place a few hours later as a result of the electric shock. According to the Appellants Jagdev Dutt was a workman and the death having taken place as a result of injuries sustained during the course of his employment compensation is payable under the provisions of the Workmen's Compensation Act. While it is denied that Jagdev Datt was a workman and the accident took place during the course of his employment it is not contested that the amount claimed would become payable to the Appellants as his heirs under the Act if in fact he was a workman and the work in which he was employed was during the course of business of the

Respondent-firm.

3. A workman, under Clause (n) of Sub-section (I) of Section 2 of the Workmen's Compensation Act.

means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is:

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or.

(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule II,....

The list of persons mentioned in Schedule II are included as workmen within the meaning of Section 2(1)(n) and includes inter alia a person who is:

(viii) employed in the construction, maintenance, repair or demolition of:

(a) 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; or

x x x x

In order to exclude a person from the category of workman entitled to compensation under the Workmen's Compensation Act, it has to be shown that he is a casual employee and is not engaged in the trade or business of an employer. There is abundance of authority for the proposition that the onus of proving both these matters is on the employer. In *Sitharama Reddiar v. Ayyasami Counder* (1955) 2 Lab LJ 768 : (S) AIR 1956 Mad 212), Ramaswami, J. of the Madras High Court had occasion to examine this matter in detail. It was observed at page 769 in paragraph 6 of the reported judgment (of Lab LJ) : (at p. 213 of AIR in Para 6) that the onus in such cases would be on the employer to prove the condition which is necessary for the purpose of excluding a person from the category of a workman, and it has to be shown that the workman's employment was of a casual nature.

It has been proved in the present instance that Jagdev Datt had been employed on a wage which worked out to Rs. 150/- per month and he had been doing the work for about a week. It has further been established that he was painting a wall when he touched an electric wire and fell down from the stool where he was standing and intracranial haemorrhage was caused and asphyxia occurred which caused his death. The learned Commissioner has taken the view that the case of Jagdev Datt does not fall within Clause (via) because he was not engaged in the work of repairs. It is conceded by Mr. Bhagirath Dass that, he is unable to support this reasoning of the learned Commissioner to uphold the conclusion that Jagdev Datt was not a workman. It is, however, contended by him that the

deceased was a casual worker and his employment was not for the purposes of trade or business of the Respondent-firm. Ramaswami, J. in (1955) 2 Lab LJ 768 : (S) AIR 1956 Mad 212, observed that casual employment is employment necessitated by chance circumstances, but where a person is under a contract with an employer to do work at recurring times which must, or which it is known beforehand it will be, convenient to do at such recurring times, the employment of such a person is not of a casual nature.

In construing what is an employment of a casual nature, it is the nature of the service which has to be looked at and not its duration. With the progress of times, the concept and the circumstances in which a workman is entitled to compensation has considerably widened and a liberal construction has to be put on this phrase. The learned Commissioner did not direct his mind to this problem at all and his mere ipse dixit does not render the employment casual in nature. The Respondent-firm, on whom the onus lay, has not established that the appointment of Jagdev Datt was casual.

In the Bombay case of Ebrahim Haji Jusab Vs. Jainibi Anuddin, , it was held by the Division Bench of Patkar and Barlee, JJ. that a mason who was employed by the owner of property at Parel and who fell from the scaffolding while executing repairs to his building, was not a workman whose employment was of a casual nature. This is a case which is closest to the present one and there is no distinction in principle or reason between a mason and a painter both of whom are employed in the work of repairs. It may be observed that in the case of AIR 1930 Bom 270 also, the Bench held that the onus is always on the employer to prove the condition which is necessary for the purpose of excluding a person from the category of a workman, and it has to be shown that the workman's employment was of a casual nature. Another ruling which has been relied upon by the learned Counsel for the Appellants is a Division Bench judgment of Kishorchand Bhai v. Damodar AIR 1957 MP 84, which was heard by the Letters Patent Bench of Chief Justice Hidayatullah (now Justice of the Supreme Court and Chaturvedi, J. It was held by the Bench that both the limits of the conditions of exclusion in Section 2(I)(n) have to be satisfied before a person can be excluded from the category of "workman".

If a man is employed for the purposes of the trade or business, the employer is liable, even though the employment is of a casual nature. In that case the person was engaged in the construction of a godown for the purposes of storing grain which was held by the Court to be so vitally connected with the business of (lea-ling in grain that there can be no doubt that a mason constructing it is employed for the purposes of the employer's trade or business, and even though such a mason is employed casually he will be deemed to be a workman u/s 2(1) (n). Reliance was placed on a decision of the House of Lords in which it was observed by Lord Birkenhead, L.C. that both the conditions have to be satisfied vide *Menton v. Cantwell* 1920 AC 781, at p. 786. The ingredients necessary for constituting, a person as a workman are the same as are under the English Law.

Lastly, there is a Single Bench ruling of Chhangani, J. of the Rajasthan High Court in Madanlal Vs. Mangali, where it was held that the burden of proving the casual nature of the employment is, under the scheme of the Act, upon the employer.

4. On the facts which have been found by the learned Commissioner, there appears to be no doubt that the Appellants are entitled to succeed. The learned Commissioner had no warrant to say that Jagdev Datt was not a workman when his employment was not of a casual nature and in any event he was employed in the course of the business of the Respondent-firm. It appears that the mind of the Commissioner was influenced by the fact that the deceased was not engaged in the work of repairs and it is not denied that the word "repair" as it occurs in Clause (viii) of Schedule II has been over-looked by the Commissioner. That the deceased was engaged in the work of repair does not admit of any doubt.

5. Mr. Bhagirath Dass argued that no question of law is involved in the case and has relied on proviso to Sub-section (1) of Section 30 of the Workmen's Compensation" Act, in which it is said that the appeal to the High Court would not lie unless a substantial question of law is involved. In my opinion, the substantial question of law in the present case is whether the deceased person was a workman within the meaning of the Act and on the facts found by the Commissioner himself. When law has been wrongly applied to admitted facts interference in appeal is clearly called for u/s 30. The learned Counsel has also relied on a Division Bench authority of the Calcutta High Court in Karnani Industrial Bank Ltd. Vs. Ranjan, , in which it was held by Rankin, C.J. and Costello, J. that Section 12 contemplates that for a person to be liable for compensation it is necessary that the execution of the work in the course of which the workman is injured should be an ordinary part of that person's trade or business. Now, Section 12 of the Workmen's Compensation Act deals with a contingency where any person in the course of or for the purposes of his trade or business contracts with any other person for the execution of the work and some person during the course of this sub-contract receives injuries for which compensation is sought. In the present case, Jagdev Datt was directly employed by the Respondent-firm and the work of painting the shop where the business is carried on clearly comes within the ambit of the trade or business of the Respondent-firm.

6. In my opinion, there is no escape from the conclusion that Jagdev Datt was a worker and he received the injuries during the course of his employment. In this view of the matter, the appeal must succeed and the order of the learned Commissioner set aside. The Appellants should be entitled to the sum of Rs. 35,00/- as compensation. The Appellants will also get the costs of this appeal.