

(2014) 07 TP CK 0055

In the Tripura High Court

Case No : Miscellaneous First Appeal (WC) No. 33 of 2007

State of Tripura Vs Shymal Datta

Date of Decision : 11-07-2014

Acts Referred:

Factories Act, 1948 — Section 2

Workmen's Compensation Act, 1923 — Section 2, 2(1)(n), 2(n)

Citation : (2014) 4 ACC 857 : (2015) ACJ 2492 : (2014) 2 AnWR 802 : (2014) 143 FLR 154 : (2014) 3 GLT 694 : (2014) 4 LLJ 383

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : A.S. Lodh, Addl. GA, Advocate for the Appellant; P.K. Debnath, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—This appeal under the Workmen's Compensation Act was admitted on 08.08.2008, but no substantial question of law was raised. However, during the course of hearing arguments, I am of the opinion that the following substantial question of law arises in this case:-

"Whether, the claimant who was working as a cook in the canteen of the boys' hostel was a workman within the meaning of the Workmen's Compensation Act?"

The undisputed facts are that the claimant was working as cook on daily rated basis in the Takarjala Boys' Hostel of Takarjala School. He was on duty when a group of unknown extremists came inside the boys' hostel and opened fire and he received bullet injury on his person. He filed a petition for grant of compensation under the Workmen's Compensation Act. The learned Tribunal has granted compensation of Rs. 2,15,300/- to the claimant. Hence, this appeal.

2. Ms. A. Sharma Lodh, learned counsel appearing on behalf of the State, urges that the petitioner-respondent was not a workman within the meaning of section 2(n) of the Workmen's Compensation Act. Relevant portion of the section reads as follows:-

"2(n). "workman" means any person who is--

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

3. The argument raised on behalf of the State is that a cook in a school hostel is not included in Schedule II of the Workmen's Compensation Act. On the other hand, Sri P.K. Debnath, learned counsel for the claimant-respondent, submits that the case of the claimant is covered in terms of Schedule II item (ii) which reads as follows:-

"II(ii). The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is--

(ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948 (63 of 1948), is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made whether or not employment in any such work is within such premises or precincts, and steam, water or other mechanical power or electrical power is used;"

He submits that even in a hostel, manufacturing process of preparing food is carried out and, therefore, the claimant was a workman within the meaning of the Act.

4. The appellants rely upon the judgment of the Apex Court in *Om Parkash Batish Vs. Ranjit @ Ranbir Kaur and Others*, wherein the Apex Court held that merely because the person was working does not mean that he is a workman. Relevant portion of the judgment reads as follows:-

"23. The workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provisions of the Act.

24. Schedule II appended to the said Act to which reference was made by Mr. Dhingra, in our opinion, is not applicable, as it is subject to the provisions of Section 2(1)(n) of the Act. If, therefore, the law as it then stood would exclude the applicability of the Act, having regard to the definition of the term "workman" the same cannot be held to include deceased, only because he was working in connection with a building activity.

Even otherwise, working in a residential house does not satisfy the requirements of law."

5. In my view, this judgment is not applicable because in that case, the workman was working in a residential house and not in a place where manufacturing work

was being done. As far as the present case is concerned, the judgment of the Apex Court in *M/s. Sunil Industries Vs. Ram Chander Pradhan and Another*, is much more relevant. In the case before the Apex Court, the petitioner-Industry was running a workshop and in that workshop the claimant was working as a press operator. It was urged that he was not a workman. The Apex Court rejected this contention and held as follows:-

"7. We are unable to accept the submissions of the learned counsel. It is true that the Workmen's Compensation Act, 1923 has been amended on a number of occasions. However in spite of numerous amendments the legislature has purposely omitted to specifically provide that only a workman who is employed in a factory, as defined in the Factories Act, could make a claim. All that has been done is that in Schedule II of the Workmen's Compensation Act it is inter alia clarified that persons employed, otherwise than in a clerical capacity, in any premises wherein a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 are workmen. Significantly the definition of the term "Factory" as appearing in clause (m) of Section 2 of the Factories Act, 1948 has not been incorporated in the Workmen's Compensation Act. Thus it is clear that for the Workmen's Compensation Act to apply it is not necessary that the workman should be working in a factory as defined in the Factories Act, 1948. It has not been denied that the workshop of the appellant would fall under clause (k) of Section 2 of the Factories Act. Therefore, the 1st respondent would be a workman within the meaning of the term as defined in the Workmen's Compensation Act."

6. I am of the view that the present case is squarely covered by the said judgment. The canteen of the boys' hostel is a place where manufacturing process is done and in this behalf, reference may be made to the judgment of the Apex Court in *Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others*, . Merely because the school is not a factory does not mean that the claimant is not a workman. If a manufacturing process is taking place in the school, a person working in that portion of the school would be a workman. In the kitchen, manufacturing process takes place and, therefore, in my opinion, the claimant is a workman and entitled to compensation.

7. Therefore, I find no merit in the appeal which is accordingly rejected. Send down the lower court records forthwith.