

(2014) 09 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1628/2012

Subita and Others

APPELLANT

Vs

Ram Singh and Others

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Employees Compensation Act, 1923 — Section 2(n), 22, 30, 4, 4A

Citation : (2014) 09 RAJ CK 0035

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : M.S.S. Sharma, for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J. This Civil Misc. Appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter "the Act of 1923") against the judgment/award dated 24.01.2012, passed by the Employee's Compensation Commissioner, Sikar (hereinafter "the Commissioner") whereby the applicants appellants" (hereinafter "the applicants") claim for compensation under the Act of 1923 was dismissed as not being maintainable.

2. The facts of the case are that the applicants being the wife and children of the deceased Mahendra Choudhary filed a claim under Section 22 of the Act of 1923 stating that he was employed with the respondent No. 2--Mukesh Kumar and worked at his shop doing business in the name and style Ashok Kumar, Mukesh Kumar in Gangori Bazar, Jaipur. It was averred that on 05.04.2007 Mahendra Choudhary opened the shop in issue and was thereafter sitting outside on the scooter. Opposite the shop, the respondent No. 2's dilapidated house was being demolished. In the course of demolition, one of the overhangs broke loose and fell on Mahendra Choudhary's head wherefrom he suffered serious head injury and died therefrom. It was stated that at the time of his death, the deceased Mahendra Choudhary was 32 years of age and drawing a salary of Rs. 6,000/- p.m. Consequently the applicants sought compensation of Rs. 4,07,700/- along

with interest and penalty.

3. On the service of the application, reply of denial was filed by the respondents. Thereon the learned Commissioner framed four issues which loosely translated are as under:

"(i) Whether on 05.04.2007 the deceased Mahendra Choudhary then employed with respondent No. 2 was fatally injured owing to the careless and haphazard demolition of the house of the respondent No. 2 and died therefrom.

(ii) Whether at the time of the accident of 05.04.2007, Mahendra Choudhary was 32 years of age and was being paid Rs. 6,000/- p.m. as salary by the respondent No. 2.

(iii) Whether the accident of 05.04.2007 leading to fatal injuries to Mahendra Choudhary was not occasioned by demolition by respondent No. 1, the contractor Ram Singh, of residential house of respondent No. 2.

(iv) Whether in view of the objection as to the maintainability of the claim, it was liable to be dismissed and the applicants not entitled to compensation as claimed."

4. As issue No. 4 with regard to the maintainability of the claim at the instance of the applicants was a fundamental issue, the Commissioner proceeded to first address it. He found that from the evidence on record it transpired that Mahendra Choudhary at the time of accident of 05.04.2007 was working in the shop in which admittedly even as per the case of the claimants themselves at best only 5 to 7 persons were employed. The Commissioner in the circumstance referring to the extant definition of "workman" in Section 2(n) of the Act of 1923 as obtaining on the date of the accident i.e. 05.04.2007 concluded that the deceased Mahendra Choudhary was not a workman and a claim under the Act of 1923 qua his death was not maintainable. The claim therefore was dismissed. Hence this appeal.

5. Counsel for the claimants does not dispute the fact that at the time of accident of 05.04.2007, Mahendra Choudhary was working at a shop employing 5 to 7 persons and hence was not a "workman" as defined under the extant Section 2(n) of the Act of 1923. He however submits that the amendment to the Act of 1923 in the year 2009 would render the deceased Mahendra Choudhary a workman under the Act of 1923 and the amendment ought to be read retrospectively as the Act is a welfare legislation. It was submitted that by the amendment to the Act of 1923 brought about in the year 2009 effective 22.12.2009, the condition of employment of 20 workers in a shop was deleted. Consequently the employment of Mahendra Choudhary by the respondent No. 2 at a shop even employing 5 to 7 persons would by itself suffice. And the claim would be maintainable before the Commissioner under the Act of 1923 for Mahendra Choudhary's death from an injury arising out of and in the course of his employment with the respondent-non-claimant.

6. I have heard the counsel for the claimants. Perused the impugned order dated 24.01.2012 as also the provisions of the Act of 1923 prior to the amendment of 2009 and the provisions subsequent to the amendment.

7. It is well settled that even a welfare legislation is subject to the general rule of a presumption against retrospectivity. And unless the legislature has expressly or by unquestionable implication intended that the provisions of an Act or amendment thereto is to be made applicable with retrospective effect, the presumption stands. The Hon'ble Supreme Court in the case of Shakti Tubes Ltd. Vs. State of Bihar and Others, held that even though Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 was in the nature of welfare legislature, yet the general presumption against retrospectivity applied to it consequent to which as there was no specific provision making it retrospective it had to be read and applied only prospectively. Counsel for the applicants has not been able to point out anything express or implied in the amendment of 2009 to the Act of 1923 which renders it retrospective and consequently the general presumption against the retrospectivity inexorably stands. As a result, within the definition of "workman" under Section 2(n) of the Act of 1923 as on 05.04.2007 when the accident took place, the deceased Mahendra Choudhary working in a shop with 5/7 others was not a workman. The claim under the Act of 1923 for the accident of 05.04.2007 leading to Mahendra Choudhary's death was not maintainable. The claimants could not be entitled to the benefits of the amendment of 2009 in the Act of 1923--effective 22.12.2009--in respect of an accident of 05.04.2007 i.e. prior thereto.

8. More specific to the Act of 1923 itself the Hon'ble Supreme Court in the case of Kerala State Electricity Board and Another Vs. Valsala K and Another, held that Section 4 and Section 4A of the aforesaid Act as amended w.e.f. 15.09.1995 enhancing the amount of compensation and the rate of interest payable under the Act of 1923 would be applicable not in respect of accidents prior to the amendment but only to accidents thereafter i.e. prospectively and not retrospectively.

9. In the circumstances nothing erroneous or illegal can be attributed to the impugned order dated 24.01.2012 passed by the Commissioner dismissing the claim under the Act of 1923 on the ground of it not being maintainable.

10. Consequently the civil misc. appeal is dismissed.