

(2008) 01 AHC CK 0241
In the Allahabad High Court

The Chief Engineer (Irrigation Division) and The Executive Engineer, Irrigation Division (1) APPELLANT

Vs

Smt. Rama Devi RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 30

Citation : (2009) 1 AWC 356 : (2008) 119 FLR 417

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—At the time of hearing, no one appeared on behalf of the respondents, hence only the arguments of learned Counsel for the appellants were heard.

2. This appeal u/s 30 of Workmen's Compensation Act is directed against order dated 15.04.1985 given by Commissioner, Workmen Compensation and Conciliation Officer, Allahabad in W.C. Case No. 02 of 1984, Rama Devi v. the Chief Engineer.

3. Late Kamlesh Prasad Gupta son of Rama Devi-respondent was a clerk in irrigation department. He was shot dead by some unidentified person. The respondent filed claim petition before Workman Compensation Commissioner for payment of Rs. 24,000/- as compensation due to death of her son. Appellants admitted that late Sri Kamlesh Prasad Gupta died while he was on duty. The Commissioner awarded the damages of Rs. 24,000/- along with Rs. 2760/- as interest and Rs. 12,000/- as penalty.

4. Learned standing Counsel appearing for the appellants has argued only one point in this appeal. The argument is that a clerk is not included in the definition of workman as provided u/s 2(1)(n) read with Schedule II of Workmen's Compensation Act, 1923. Schedule II of the Act contains various items. In

several of the enumerated items, it is mentioned that workman is an employee, who is employed otherwise than in clerical capacity, i.e. Item No. I, II, X, XIV, XVIII, XIX and XXX.

Item No. VIII (c) & X overlap to some extent. According to the Item No. VIII (c), a person is a workman if he is "employed in the construction, maintenance, repair or demolition of any road, bridge, tunnel or canal". Under Item No. X, a person is a workman if he is "employed otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway canal pipeline or sewer."

5. Canal is common to both the items. The words "construction, repair and demolition are also common to both the items. The only difference is that in item No. VIII word "maintenance" has been used while under Item No. X word "working" has been used.

6. Employees of irrigation department cannot be said to be discharging the duties only for construction maintenance etc. of canal. It has also not come in evidence that at the time of his murder, the deceased was performing the duties in respect of maintenance, construction, repair or demolition of canal. Item No. 30 relates to "employed otherwise than in a clerical capacity in the construction, working, repair or maintenance of a tube-well". Irrigation department deals with different forms of irrigation.

7. Workmen's Compensation Act basically deals with hazardous occupation where injury or death during working is likely to occur. A person, who is doing clerical job sitting in an office, which is not at the site of hazardous operations cannot be said to be workman for the purposes of the Act. The learned Commissioner has placed reliance upon Item No. VIII(c). However, the learned Commissioner did not notice Item No. X.

8. Accordingly, appeal is allowed. Impugned order is set aside.