

(2006) 07 OHC CK 0001
In the Orissa High Court
Case No : FAO No. 231 of 2001

The Executive Engineer, Padagada Dam Division and Another APPELLANT
Vs
Sri Ghana Swain RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2007) 1 ACC 589 : (2006) 102 CLT 437 : (2006) 111 FLR 401 :
(2006) 1 OLR 1091 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Pradip Kumar Rout, for the Appellant; G.N. Mishra and S.C. Sahoo,
for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal is directed against the judgment of the Learned Commissioner, Workmen's Compensation, Jeypore directing payment of compensation of Rs. 2,39,458/- to the claimant-respondent in W. C. Case No. 11 of 2000.

2. Case of the claimant-respondent is that he was working as Pump Operator in Sub-Division No. 1, Padagada Dam Division. In course of employment, on 9.12.1999 he met with an accident and sustained injuries. For the injuries sustained in course of employment, an application was field before the Learned Commissioner, Workmen's Compensation, Jeypore for payment of compensation. The appellants field a written statement denying the allegations made in the claim petition and a specific stand was taken to the effect that accident did not take place in course of and out of employment and therefore the claimant is not entitled to any compensation. On the basis of the pleadings of the parties, Learned Commissioner framed four issues and on analysis of evidence, held that the accident took place in course and out of employment. Considering the nature of injuries sustained, age of the claimant-respondent and salary he was receiving

as a Pump Operator, compensation of Rs. 2,39,458/- was allowed.

The appeal has been filed basically on the ground that the accident did not take place in course and out of employment. Preliminary objection was raised by the Learned Counsel for the claimant-respondent stating that in an appeal u/s 30 of the W.C. Act the appellate Court can entertain an appeal only on substantial questions of law and has no Jurisdiction to disturb any finding of fact. I will deal with the objections of the Learned Counsel for the respondent at a later stage.

3. Learned Counsel appearing for the appellants referring to the evidence adduced before the Learned Commissioner stated that the claimant-respondent was working as a Pump Operator. On 9.12.1999 he was also on duty. On the aforesaid date after finishing normal duty, the claimant climbed a Champa tree to pluck flowers and fell down from the tree. Due to such fall from the tree the claimant-respondent sustained injuries and therefore it cannot be said that the accident took place in course and out of employment. It was also contended by the Learned Counsel for the appellant that climbing a tree is not a part of the work of the claimant-respondent and therefore having done so on his own, injury sustained by him due to fall from the tree cannot be said to be an accident in course and out employment. Learned Counsel appearing for the claimant-respondent, on the other hand, submitted that on analysis of evidence adduced from both sides, the Learned Commissioner arrived at a finding of fact that the accident took place in course and out of employment. There being no substantial questions of law involved in this regard, such finding of fact cannot be challenged in appeal. Learned Counsel for the parties have produced certified copies of deposition of witnesses examined before the Learned Commissioner. The claimant has examined himself as P.W. 1. In his deposition he has stated that on the date of accident while in employment as Pump Operator he was trying to switch on the Pump from a height and fell down, as a result of which he sustained injuries all over his body. He has further stated that he was immediately shifted to a hospital in a Government Vehicle along with another Pump Operator, Khalasi and co-worker and remained in the hospital for about 7 days as an indoor patient. Thereafter he was shifted to Berhampur M.K.C.G. hospital and there he was again kept under treatment for about one month. From his deposition it further appears that he had sustained injuries, such as and was operated. In his cross-examination he has stated that he sustained injuries for a fall from a tree was denied. The employer-appellants examined nine witnesses. The employer through the evidence of these witnesses has tried to prove its stand that the claimant-respondent sustained injuries due to fall from a tree. O.P.W. 1 was standing in a pan shop and in his deposition has stated that after finishing normal duties the claimant-respondent went to Champa tree to pluck flowers and fell down from the tree. In cross-examination he has admitted that he had not seen when the claimant climbed the tree to pluck flowers. O.P.W. 2, another employee working in the said Division stated that the claimant - respondent fell down from a Champa tree while plucking flowers and sustained injuries. In cross examination he has admitted that at the time of occurrence he

was in his home. O.P.W. 3 has stated that while he was present near a pan shop he saw the claimant-respondent falling down from a Champa tree that too from a height of 8 feet. In cross-examination he has stated that he had not seen the claimant climbing the tree and only saw him falling from the tree from a distance of 600 ft. O.P.W 4 stated that while he was going to join duty he saw the claimant falling down from the tree. In examination-in-Chief itself he has admitted that at the time of accident he was in his house. In cross-examination also he admitted not to have seen the claimant climbing a tree. O.P.W. 5 has not stated anything about the accident. Same is the evidence of O.P.W. 6. O.W.P. 7. is the doctor who examined the claimant. O.P.W. 8 is not an eye witness to the occurrence and O.P.W. 9 has not stated anything so far as the accident is concerned. In view of such nature of evidence, it is clear that none of the witnesses examined on behalf of the employer had seen the claimant-respondent climbing a tree to pluck flowers and falling down from the tree. Under the circumstances, evidence of the claimant that while trying to switch on the pump he fell down is to be accepted.

This Court in the case of Divisional Manager, New India Assurance Co. Ltd. Vs. Haladhar Saha and Another, held that u/s 30 of the Workmen's Compensation Act, 1923 finding of fact cannot be entertained in appeal. In the case of Divisional Manager, S.E. Railway and Another Vs. P. Vijayarajnam, this Court held that whether the accident took place in course of employment or not is a question of fact and not available to be challenged in appeal u/s 30 of the Act if appreciation of evidence on record does not suffer from any illegality. In the case of Managing Director, O.R.T. Co. Ltd. Vs. S. Rama Mohan Rao, . This Court held that if finding of fact is based on no material, the Court can disturb such finding of fact in appeal u/s 30 of the Act. In the case of Smt. Sumitra Devi v. Executive Engineer, Udar Asthan Irrigation Division, Jahanabad, Gaya reported in 1996 (1) TAC 447, a Division bench of Patna High Court held that the Appellate Court cannot interfere with the finding of fact only on the ground that two views are possible or on appreciation of evidence a different view than the view taken by the Commission can be taken. Here is a case where the employer took a stand that the claimant- respondent climbed a Champa tree to pluck flowers and while doing so he fell down and sustained injuries. Though such a stand was taken as discussed earlier, the employer measurably failed to prove the same. On analysis of the evidence the Learned Commissioner having accepted the version of the claimant, I do not find any infirmity in appreciation of evidence by the Commissioner and therefore u/s 30 of the Act it is not open for this Court to interfere with the finding of fact as the same is not found to be perverse. Having found that the employer measurably failed to prove its stand, version of the claimant is to be accepted and therefore it can safely said that the accident took place in course and out of employment. Learned Counsel for the appellant having not shown any other ground in appeal, the appeal fails.

4. In view of the discussions made above, the appeal is dismissed.