

(2012) 12 DEL CK 0282
In the Delhi High Court
Case No : FAO 106 of 2010

Usha Srivastava

APPELLANT

Vs

Progressive Finlease Ltd. and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

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

Citation : (2012) 12 DEL CK 0282

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Pratima N. Chauhan, Amicus Curiae, for the Appellant;

Final Decision : Disposed Off

Judgement

Veena Birbal, J.—Present is an appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") against the impugned judgment dated 23.11.2011 passed by the Commissioner under the aforesaid Act wherein claim petition of the appellant for grant of compensation has been dismissed. Briefly, the facts leading to the filing of the present appeal are as under:-

The appellant's husband late Sh. V.K. Srivastava was working with respondent no. 1 company as an Accounts Assistant performing activities like preparation of tax papers, filing and preparing income tax Returns on behalf of the respondent company. Besides the aforesaid work, it is alleged that the husband of appellant was also asked to do the field work including negotiations with the bank employees or carrying out any work vis-?-vis any work of the company. Her further case was that on 18.05.2004, her husband was assigned some field work by the company's director Sh. Govind Gupta i.e. respondent no. 3. On that day, during the course of his employment in the field work he had met with an accident and died on the same day. The appellant had sent a demand notice to the respondent/employer. Thereafter, she had filed an application for seeking death compensation under the Workmen's Compensation Act. The respondents had filed their written statement. Issues were framed. On 14.12.2007, the

appellant had filed her evidence by way of an affidavit and the matter was fixed for cross-examination by the respondents. Thereafter, the case was adjourned for about 14-15 dates but no cross-examination by the respondents was conducted and ultimately their right to cross-examination was closed and thereafter the matter was listed for respondent's evidence. However, for few dates respondents did not appear and their R.E. was closed. On 12.10.2009, counsel for respondents had appeared and the matter was discussed with the counsel for appellant and impression was given for settling the matter and the said counsel had taken the date. Thereafter, authorized representative of the respondent sought adjournment for calling the Directors of respondent/company in court and the matter was adjourned to 16.11.2009. On 16.11.2009, an application was moved on behalf of the respondents for recalling of order dated 13.05.2009 by which their evidence was closed. Ultimately, on 23.11.2009, Sh. Govind Gupta, Director of the company had appeared and the claim of the appellant was dismissed.

2. Aggrieved with the same, present appeal is filed.

3. Learned counsel for the appellant has submitted that the Commissioner has passed a non-speaking order. The un rebutted evidence of the appellant has not been considered wherein she had given the details of work being done by her deceased husband. It is submitted that the definition of "workman" as defined u/s 2(1)(n) of the Act is exhaustive. The same is to be read along with list given in Schedule II of the Act which includes the persons who are included in the definition of "workman". It is alleged that the nature of the work which was being done by the deceased brings him within the ambit of definition of "workman" as defined under the aforesaid provision of the Act. It is submitted that the mere designation of a person as Accounts Assistant will not change his status as that of a workman. It is further submitted that the designation is not decisive in the matter but what is decisive is the dominant nature of duties and functions assigned to an individual. In support of above submission, learned counsel has relied upon Managing Director, J and K. P.C.C. Vs. Commissioner for Workmen's Compensation and Others, ; Gulabdei Ahir Vs. Union of India (UOI) and Another, . It is further submitted that the Commissioner has passed a totally non-speaking order and matter needs to be remanded back for deciding afresh after considering the material on record.

4. The impugned order dated 23.11.2011 is reproduced as under: -

23.11.2009

Claimant present in person

Respondent: Shri Govind Gupta, Director is present with AR Sh. Inayat Ahmed Advocate

Shri Govind Gupta, Director of the Respondent Company appeared today and paid Rs. 5000/- to claimant as cost imposed on last date.

The case matter is discussed in detail. After discussion/hearing the respondent and on perusal of documents filed by the parties in this case, it is admittedly established that Shri Vinod Kumar Srivastava was working as Assistant Accountant/the clerical capacity with the Respondent Company. The Respondent made it clear that the deceased was working in office of the company.

In view of the above, it is clear that the deceased was working in the clerical capacity in the company of Respondent from which it is clear that as per the definition of workman coverable under the Act for the purpose of compensation, the deceased is not covered, therefore, in view of the definition of workman u/s 2(1)(n) Schedule II, the claim petition filed by the claimant is not maintainable. Hence dismissed.

CWC

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5. It has been recorded in the impugned order that the matter has been discussed in detail. However, no discussion is stated in the impugned order. Further, nothing is stated as to what material was considered in arriving at the conclusion that deceased was working in the clerical capacity. The Commissioner has passed a non-speaking order without disclosing the material on record on the basis of which the finding is given that the deceased was working in the clerical capacity whereas stand of the respondent is that he was doing field work of the management also apart from the office work and she had given the details also.

6. No one has appeared to assist the court on behalf of the respondents. Respondents were served in this matter. Counsel for respondent no. 1 had appeared only once i.e. on 13.03.2012. Thereafter, no one has appeared on behalf of the respondents.

7. In view of above discussion, the impugned order is set aside and the matter is remanded back to the Commissioner for deciding afresh in accordance with law. The parties to appear there on 03.01.2013. If no one appears for respondents on the said date, Commissioner will send a notice to the respondents. Considering that present is an old matter, all the efforts will be made by the Commissioner to decide the same expeditiously. The fee of Ms. Pratima N. Chauhan, Amicus Curiae for assisting the court is fixed at Rs. 5,000/-.

Appeal stands disposed of accordingly.