

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 09.07.2024

Pronounced on 16.07.2024

FAO (WC) No. 23/2022

1. State through Executive Engineer PHE Division, Doda.Appellant(s)/Petitioner(s)

Through: Mr. Amit Gutpa, AAG

Vs.

1. Sakina Begum wd/o Atta Mohammed Khanji R/o Paneen Bhagwah Teh. and District, Doda.

2. Commissioner Employees Compensation Act (Assistant Labour Commissioner) Doda, J&K

...Respondent(s)

Through: Mr. Sheikh Altaf Hussain, Adv.

CORAM: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

JUDGMENT

01. Impugned in the instant appeal filed under the provisions of Section 30 of the Employees' Compensation Act, 1923 (hereinafter to be referred as "the Act" for short) is the Award dated 29.06.2015 passed by the Court of learned Commissioner Employees' Compensation Act (Assistant Labour Commissioner) Doda J&K ((hereinafter to be referred as "ALC" for short) on the application of respondent No. 1, Sakina Begum Wd/o Atta Mohammed Khanji R/o Paneen Bhagwah Tehsil and District Doda, whereby a

compensation for an amount of Rs. 7,58,240/- came to be passed in her favour and against the non-applicant (appellant herein) in terms of the provisions of Section 4, read with Schedule-IV of the Act along with simple interest @ 12% per annum, to be calculated from the date of death of the husband of the applicant/respondent No. 1 i.e. 4th September, 2011 till the date said amount is deposited with the learned ALC.

02. Brief facts of the case relevant for disposal of the instant appeal are that the husband of respondent No. 1, namely, Atta Mohammed Khanji (hereinafter to be referred as “deceased” for short) was working as a labourer under the employment of a Contractor, who had been allotted execution of some works by the appellant/non-applicant. That the deceased was engaged for loading/unloading of the irrigation pipes from PHE store, Doda to peripheries and on the crucial date i.e. 4th September, 2011, while the deceased was loading the pipes, one pipe fell on his head, resulting into his death as a result of the critical injury sustained there from. That on the date of his death, the deceased was earning Rs. 10,000/- per month as wages. That the respondent No. 1 being the widow of the deceased filed an application before the learned ALC for grant of compensation under the provisions of the Act, which was resisted by the appellant/non-applicant and the learned ALC after conclusion of the enquiry, passed the impugned order awarding compensation along with interest in favour of respondent No. 1, to be payable by the appellant/non-applicant.

03. The order impugned has been assailed on the grounds *inter alia* that the same is liable to be set aside as being against the facts and the law. That the learned ALC did not consider and appreciate the important and material issues raised by the appellant in its objections to the effect that the deceased as admitted by respondent No. 1/applicant, was under the employment of a Contractor and not of the appellant and as such, Respondent No. 1/Applicant was not qualified to seek compensation from the appellant. That the application of the respondent No. 1 before the learned ALC deserves dismissal on account of non-joinder of necessary party. That the learned ALC has fallen into a serious error by under estimating that the deceased was not under the employment of the appellant in view of the provisions of the law as contained under Section 2(1) (dd) of the Act. That the income of the deceased was taken without any valid proof to that effect. That no notice as needed under Section 10 of the Act was issued to the appellant.

04. I have heard learned counsel for the parties.

05. Learned counsel for the appellant/non-applicant, in reiteration of his grounds already taken up in the memo of appeal, submitted that the order impugned suffers from perversity and illegality as the learned ALC has passed the award of compensation against the appellant, who was not employer of the deceased, as such, was not liable to account for the same. He submitted that it is admitted case of respondent No. 1/applicant that the deceased was working as a labourer for the Contractor and not for the appellant but the said Contractor was not arrayed as a party/non-applicant in

the application filed before the learned ALC. Learned counsel further argued that the appellant cannot be directed to pay the public money without any legal justification or liability for the same. He further submitted that without prejudice to the non-maintainability of the application giving rise to the impugned award for non-joinder of the necessary party, learned ALC has wrongly assessed the compensation amount by taking income of the deceased as 8000/- per month without any documentary proof.

06. Per contra, learned counsel for the contesting respondent No. 1 submitted that impugned award does not suffer from any illegality or perversity. He submitted that it was clearly and unequivocally proved at the enquiry proceedings that the deceased was working under the employment of a Contractor, who had been allotted execution of some works by the appellant and as such, the appellant also qualifies as an employer of the deceased for the purpose of provisions of the Act. He submitted that even the witnesses examined by the appellant deposed at the proceedings before the learned ALC that the deceased was working as a labourer engaged for loading/unloading of pipes by the Contractor, who had been allotted some works by the appellant. That it was also proved at the proceedings that the deceased was in receipt of daily wages of Rs. 300-500, who was supporting his family consisting of respondent No. 1/widow and his two sons. He further contended that on account of the sad demise of the deceased during his employment with the appellant, his elder son abandoned his studies. That the another son of the deceased is studying in Class 12th.

07. Learned counsel while controverting the stand of the appellant/non-applicant, vehemently contended that the appellant is deemed to be the principal employer of the deceased and in view of the Section 12 (1) of the Act, he was liable to account for the compensation. Learned counsel invited attention of this Court towards the provisions of Section 12 of the Act, which makes the principal liable for compensation in respect of an employee engaged by the Contractor. Learned counsel also placed reliance on the authoritative judgment of High Court of Karnataka at Bangalore passed in **Thirthamurthy vs. Radha, 2003 ACJ 537**, wherein it has been held that claim under the Act can be proceeded either against the principal employer or against the contractor or against both. That the owner is basically liable in respect of any claim arising out of such an incident. That in any view of the matter the owner is not exonerated of his liability. That if at all he can establish that the accident had taken place due to the negligence of the contractor, who had employed the deceased, he can claim reimbursement of the compensation amount from the Contractor.

08. It was further contended by the learned counsel for respondent No. 1 that even if, evidence on the enquiry proceedings was led to the effect that the deceased was in receipt of monthly wages of Rs. 10,000/- yet the learned ALC took his monthly income as Rs. 8000/- in accordance with the Government norms being the maximum amount.

09. I have perused the memo of appeal, the impugned award and also the record of the learned ALC.

10. Keeping in view the aforementioned perusal and consideration in light of the law on the subject, this Court is of the considered opinion that there appears to be no perversity or illegality in the impugned award, which has been passed in accordance with the law.

11. It is admitted by both the sides that the deceased was engaged as a labourer by a Contractor, who had been allotted execution of some works by the appellant/non-applicant. It has also come in the evidence at the enquiry proceedings before the learned ALC that the deceased was engaged for loading and unloading of the pipes, which he used to fetch from the departmental store of the appellant for removing of the same to the work sites. It is also not in dispute that the deceased died on 4th September, 2011 during loading/unloading of the pipes, when one of pipes fell on his head, resulting into his death.

12. Respondent No. 1 besides herself stepping into the witness box, examined Mohd Shafi S/o Makhana Gujjar R/o Bhagwah in support of her application. Respondent No. 1/applicant in her statement deposed that the deceased used to earn Rs. 15,000/- to 16,000/- per month and the entire family was dependent on his earning. She further deposed that on account of sad demise of her husband, her elder son abandoned his studies when her another son is studying in 12th Class. That she incurred expenditure of Rs. 30,000/- on performance of last rites of the deceased. PW Mohd Shafi deposed at the enquiry proceedings that he knew the deceased and he was working with him

for pipes loading/unloading work for the PHE Doda. That the deceased used to earn Rs. 300-500 per day.

13. The witnesses examined by the appellant/non-applicant before the learned ALC, namely. Ayazul Haq S/o Mohd Yusuf, JE PHE, Doda and Mohd Yaseen S/o Gh. Qadir, employee of the PHE Division, also deposed that the deceased was engaged in the work of loading/unloading of PHE pipes and had been engaged by the Contractor.

14. Learned ALC has taken age of the deceased as 38 years as on the date of accident on the basis of his date of birth certificate showing his date of birth as 16.04.1973.

15. The compensation appears to have been worked out rightly in accordance with the provisions of Section 4, read with Schedule-IV of the Act and interest also appears to have been levied rightly under the provisions of Section 4-A(3) of the Act.

16. Learned ALC through the impugned award appears to have rightly addressed the objections of the appellant/non-applicant regarding non-joinder of the Contractor as party. It has been observed by the learned ALC though the impugned award that the present appellant/non-applicant being the principal within the meaning of Section 12(1) of the Act is liable to compensate the respondent No. 1, even if the Contractor is not made party to the claim. It has been further observed by the learned ALC that the evidence was brought on the file to the effect that the work done by the deceased

invariably belonged to the appellant/non-applicant and the deceased had been employed there through a Contractor.

17. A clear reading of the provisions of Section 2 (1)(e) and Section 12 of the Act make it abundantly evident that where a principal employer engaged a Contractor for execution of some works, he is liable to compensate to any employee engaged by the Contractor for doing his work. It is profitable to reproduce the aforesaid provisions of law for ready reference

2(1)(e) "employer" includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a *[employee] are temporarily lent or let on hire to another person by the person with whom the *[employee] has entered into a contract of service or apprenticeship, means such other person while the *[employee] is working for him;

12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any *[employee] employed in the execution of the work any compensation which he would have been liable to pay if that *[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the *[employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the *[employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the *[employee] could have recovered compensation] and all questions as to the right to and the

amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a *[employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

18. The main object of enacting Section 12 of the Act is to secure the compensation to the employees, who have been engaged through the Contractor by the Principal Employer for the latter's ordinary part of business. The scheme of Section 12 of the said Act is intended to secure to a workman the right to claim compensation not only against the immediate employer, be it a contractor or sub-contractor but also against the principal employer. The Employees Compensation Act, 1923 is a beneficial legislation intended to confer benefits on the workmen and the provisions of this section would apply notwithstanding any agreement or contract to the contrary. It is a settled legal position that in view of specific provisions of Section 12(1) of the Act even the principal employer is liable to compensation in respect of accidental death of workman in the course of his employment through contractor. This Court in its opinion is fortified with the law laid down in **South Central Railway v. Manjamma ILR 2012 KAR 5171, HP State Forest Corpn. Ltd. vs. Vimla Devi (2000) 2 LLJ 500 (HP)(DB), Century Chemicals and OILs (P) Ltd. vs. Esther Margathan, (1998) 2 LLJ 473 (Mad) and Asst. Director of Horticulture Division Anna Pannai vs. Andi (1997) 2 LLJ 568.**

19. This Court is in agreement with the law laid down in *Thirthamurthy vs. Radha*, 2003 ACJ 537 (supra) relied upon by the learned counsel for the contesting respondent No. 1 to the effect that the claim for compensation under the Act can be proceeded against the principal employer or contractor or both. However, the principal employer in the circumstance, where the employee being engaged by the contractor or sub-contractor dies, or suffers some injuries in the course of employment, can seek indemnification from the Contractor in view of the Section 12 (2) of the Act.

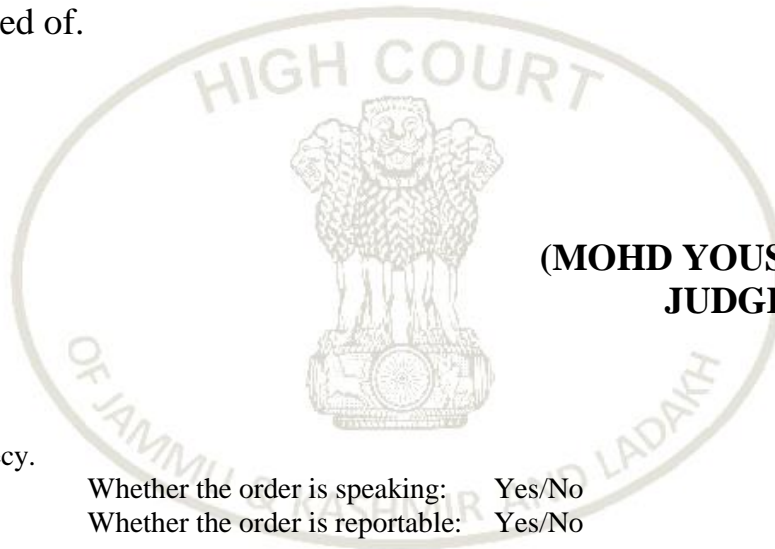
20. Normally, the Government or Semi-government projects and other works are being executed through Contractors pursuant to the tendering processes and as such, ends of justice demand that in furtherance of object of the Employees Compensation Act 1923 being a social legislation aimed at to facilitate smooth award of compensation to the injured employees or dependants of the deceased employees, the tender notices need to *inter alia* include a condition to the effect that in case of award of compensation against the principal employer, the Contractors may be liable for indemnification as per provisions of Section 12 of the Act. Such stipulations shall prompt the Contractors to secure available beneficial insurance policies in respect of the employees being engaged by them and the Contractors in such situations can plead the benefit of such insurance schemes during any compensation proceeding initiated under the Act. Such a practice can facilitate the convenient and prompt payment of compensation to the suffering applicants.

21. The substantial questions of law raised in the appeal regarding “non-joinder of the necessary party” and “non liability of the Appellant to pay compensation” stand accordingly addressed to.

22. For the forgoing discussions, the appeal is **dismissed** as meritless. The amount of compensation, if any, deposited with this Court or court of learned ALC, shall be forthwith released in favour of respondent No. 1. Respondent No. 1 shall be at liberty to seek execution of the award before the learned ALC in respect of any unpaid compensation amount.

23. Disposed of.

Jammu
16.07.2024
Karam Chand/Secy.



(MOHD YOUSUF WANI)
JUDGE

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No