

Court No. - 92

Case :- FIRST APPEAL FROM ORDER No. - 1596 of 2022

Appellant :- Seema Devi

Respondent :- Vimal Jain And Another

Counsel for Appellant :- Shekhar Srivastava

Counsel for Respondent :- Ravindra Prakash Srivastava, Yogesh Kumar Mishra

Hon'ble Vipin Chandra Dixit, J.

1. This first appeal from order has been filed on behalf of claimant-appellant under Section 30(1)(a) of Employees Compensation Act, 1923 against the judgement and order dated 18.05.2022 passed by Employees Compensation Commissioner/ Deputy Labour Commissioner, U.P., Ghaziabad Region, Ghaziabad in E.C.A. Case No.- 164 of 2015 (Smt. Seema Devi Vs. Sri Vimal Jain and another) by which claim petition filed by claimant-appellant was dismissed.

2. Heard Sri Shekhar Srivastava, learned counsel for the appellant and Sri Yogesh Kumar Mishra, learned counsel appearing on behalf of respondent no. 2. No one is present on behalf of respondent no.1 in spite of service of notice.

3. Brief facts of the case are that the claimant had filed claim petition under Section 3 of Employees Compensation Act, 1923 claiming compensation of Rs. 7,68,560/- along with 12% interest on account of death of her husband namely late Sri Mahendra S/O Dhruva @ Dhroop Singh, who died on 31.03.2015 while working at site no.- C-130, Surya Nagar, Ghaziabad. It was the case of claimant before the Employees Compensation Commissioner that the deceased was an employee of opposite party no.2 for the last ten years on the monthly wages of Rs. 9,100/- per month. The opposite party no.2/employer was a contractor, got the contract for wall repairing and painting work from opposite party no.1. The deceased was working on 31.03.2015 at site no.- C-130, Surya Nagar, Ghaziabad belonging to opposite party no.1 on the direction of opposite party no.2. During the course of employment on 31.03.2015 the deceased fell down from third floor of the building and have received grievous injuries and died on 20.04.2015 on account of injuries received by him. The death was occurred arising out and in the course of his employment.

4. The opposite party nos. 1 and 2 put their appearance before the authority below and filed separate written statements denying the claim allegations. It was the case of defendant-opposite party no.1 that the deceased was never engaged by him and

there was no relation of employee-employer between deceased and opposite party no.1. The claim petition against opposite party no.1 is not maintainable and is liable to be dismissed.

5. The opposite party no.2 had also contested the claim petition by filing his written statement denying the claim allegations. The employment of the deceased was denied, but it was admitted that the deceased was engaged for painting work on casual basis at the site of opposite party no.1. It is also admitted that he was also engaged for painting work by opposite party no.1 and while performing painting work the deceased fell down and received grievous injuries and died on account of those injuries.

6. The claimant had appeared before the authority concerned as claimant-witness and had also produced documentary evidence in support of her case. The defendant no.2 was appeared as defendant-witness. The Employees Compensation Commissioner without framing issued of determination had decided the claim petition holding that the deceased was engaged for repairing and white washing on casual basis and there was no relation of master and servant and the claimant is not entitled for any compensation under the Employees Compensation Act.

7. It is submitted by learned counsel for the appellant that the claimant had fully proved her case by producing documentary as well as oral evidence regarding employment of the deceased as painter and death during the course of his employment. The defendant no.2 who was contractor had also admitted that the deceased was engaged for painting work and had received injuries in the incident on 31.03.2015 and died on account of injuries received by him on 20.04.2015. It is further submitted that the Employees Compensation Commissioner, after considering evidence adduced by the parties has accepted the employment of the deceased as casual worker on daily wages, but had rejected the claim petition as it is not maintainable under the Employees Compensation Act. The Employees Compensation Commissioner had also erred in rejecting the claim petition holding that the claimant had failed to prove the employment of the deceased and the deceased was not a permanent employee but was engaged for repairing and painting work on casual basis.

8. On the other hand, learned counsel appearing on behalf of respondent no.2 submits that the Employees Compensation Commissioner has recorded the finding that there was no relation of employee-employer and the claimant had failed to prove the employment of the deceased. The Employees Compensation Commissioner has rightly dismissed the claim petition and there is no illegality in any manner. No ground for interference is made out. The appeal is devoid of merits and is liable to be dismissed.

9. Considered the rival submissions of learned counsel for the parties and perused the record.

10. It is admitted fact that the deceased had received grievous injuries on fateful day 31.03.2015 while working as a painter at the building of respondent no.1. It is also admitted that the deceased fell down from third storey of building while he was engaged in repairing/painting work. The Employees Compensation Commissioner itself has recorded the finding after considering the evidence adduced by the parties that the deceased was engaged for white washing and painting work on fateful day i.e. 31.03.2015 and fell down from third storey and had received grievous injuries and died on account of injuries received by him. The claim petition was dismissed merely on the ground that the engagement of deceased was purely casual in nature and there was no employee-employer relation.

11. The Employee is defined under Section 2(dd) of Employees Compensation Act, 1923 which is quoted hereinbelow:-

2(dd) "employee" means a person, who is:-

"(i).

(ii).

(iii). employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;"

12. From the perusal of definition of employee, it is apparent that any person in any capacity, which is specified in Schedule II is an employee under the Employees Compensation Act.

13. The relevant portion of para (viii) of Second Schedule is quoted hereinbelow:-

"(viii) employed in the construction, maintenance, repair or demolition of -

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(c) any road, bridge, tunnel or canal; or

(d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or"

14. From the bare perusal of definition of employee it is very much clear that any person engaged in construction, maintenance, repairing or demolition of any

building, which is more than one story in height above the ground is treated as employee. In the present case, it is admitted fact that the deceased was engaged for repairing/painting work and was fell down from third story. The Hon'ble Bombay High Court in the case of **Nadirsha Hormusji Sidhwa Vs. Krishnabai Bala and another** reported in **A.I.R. 1936 Bombay 199** has held that the painting work of house include repairing of house. The relevant paragraph is quoted hereinbelow:-

"In regard to the third question, whether the painting of the house, which was the work on which the deceased was engaged, was " repair " within the meaning of Clause (viii) of the second schedule, the learned Commissioner held that it was, and I think there was clearly evidence to support that finding. In so far as the question involves the construction of the Act and the schedule, it is one of law, and I entirely agree with the view of the learned Commissioner. I should say that in normal cases the paint of a house becomes part of the structure, and if it falls into disrepair and has to be renewed, I should say that the renewal forms part of the repair of the house, or building, and that view has now been adopted in England : see Dredge v. Conway, Jones & Co. [1901] 2 K. B. 42 Mr. Bahadurji for the appellant has argued that " repair " does not include painting, and in support of that argument he relies on Clause (vii) of the second schedule which is dealing with ships, and includes loading, unloading, fuelling, constructing, repairing, demolishing, cleaning, or painting any ship. It is argued that, inasmuch as the two words " repairing " and " painting " are included in that clause the legislature must have considered that repairing would not include painting and that, therefore, the word " repairs " in Sub-section (viii) should also be held not to include painting. I see no reason for drawing that conclusion. The legislature may have considered that it was less clear in the case of a ship, than in the case of a building, that repairs would include painting. For the reasons I have given it seems to me to be clear that repair must include renewal of the paint of a building. We are not dealing with a case, which might possibly arise and in which at any rate the point would be more arguable, where a house is being repainted simply because the owner wishes to change its colour, and not because the old paint is in a bad state of repair. In the present case the building was being repainted because repainting was necessary. In my opinion that clearly falls within the word "repairs" in Sub-section (viii) of the second schedule, I think, therefore, that the appeal must be dismissed with costs."

15. From the evidence adduced by the parties, it is apparent that the deceased was engaged for repairing/painting work at the house of opposite party no.1 on 31.03.2015 and fell down from third floor and had received injuries and died on account of injuries received by him. The deceased is an employee under the ambit of Employees Compensation Act. The Employees Compensation Commissioner has erred in dismissing the claim petition holding that there was no employee-employer relation and claim petition was not maintainable, whereas from the definition clause of employee it is apparent that the deceased was working as an employee and had received injuries during the course of his employment. The finding recorded by the Employees compensation Commissioner, in rejecting the claim petition is perverse and against the law.

16. The first appeal from order is **allowed**. The judgement and order dated 18.05.2022 passed by Employees Compensation Commissioner/ Deputy Labour

Commissioner, U.P., Ghaziabad Region, Ghaziabad in E.C.A. Case No.- 164 of 2015 (Smt. Seema Devi Vs. Sri Vimal Jain and another), is set aside.

17. The matter is remanded back to the concerned Employees Compensation Commissioner to decide the claim petition as fresh after affording opportunity of hearing to the parties within a period of six months from the date of production of certified copy of this order, unless there is any legal impediments.

Order Date :- 21.11.2024

Virendra