

The Malwa Sugar Factory, Dhuri v. Bhagwan Kaur etc. (Sandhawalia, J.)

Mr. Chagla says that it is a very hard case for the appellants have been in possession for over 30 years, but if it is a hard case it is for the legislature to intervene and provide for such hard cases."

(7) For the reasons recorded above, we allow this appeal, set aside the judgment and decree of the learned Single Judge and restore that of the lower appellate Court. In view of the varying success in this litigation, we leave the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before S. S. Sandhawalia, J. --

THE MALWA SUGAR FACTORY, DHURI,—Appellant.

versus.

BHAGWAN KAUR ETC.,—Respondents.

First Appeal from Order No. 169 of 1965.

March 18, 1971.

*Workmen's Compensation Act (VII of 1923)—Sections 2(n) and 12(1)—Sub-contractor—Whether falls within the definition of "workman"—Injury caused to a sub-contractor during the execution of a work—Such injured sub-contractor—Whether entitled to compensation.*

*Held*, that the plain language of section 2(n) of Workmen's Compensation Act, 1923, makes it manifest that a sub-contractor is not within the definition of workman and as such he is not entitled to any compensation for injury caused to him during the execution of a work. A sub-contractor cannot be brought within the ambit of the definition even with the aid of section 12(1) of the Act. This section only makes the principal liable to pay compensation to a workman employed by his contractor. As is patent it makes no reference to any sub-contractor at all. Moreover, section 12(1) uses the word "workman" for the person employed under the Contractor. This word must be construed in accordance with its definition given in section 2(n). One of the necessary requisites of the definition is that the person must be one employed on monthly wages. A sub-contractor is not employed on monthly wages and hence he is not a workman.

(Para 5).

*First Appeal from the order of the Court of Shri Harish Chandra Gaur Senior Sub Judge, Barnala dated 29th September, 1964, ordering that the respondent should pay Rs. 3,500 instead of Rs. 5,000 as compensation with proportionate costs and the counsel's fee is fixed at Rs. 50. This amount should be paid within one month from 29th September, 1965, by the respondent otherwise the petitioner are competent to take out the execution.*

J. N. KAUSHAL, ADVOCATE WITH MR. ASHOK BHAN, ADVOCATE, for the appellants.

R. L. SHARMA, ADVOCATE, for the respondents.

#### JUDGMENT.

SANDHAWALIA, J.—Whether a sub-contractor is entitled to claim compensation under the provisions of the Workmen's Compensation Act, 1923, is the primary question which falls for determination in this appeal directed against the order of the authority under the Act above-said.

(2) The dependants of Nikka Singh deceased had brought the application claiming Rs. 5,000 as compensation on the ground that the latter had died due to an injury suffered in the course of the employment of the Malwa Sugar Factory Dhuri. It was further averred that the death had occurred on the factory premises and Nikka Singh being an employee of the appellants, they were liable to pay compensation therefor. This application was contested on behalf of the appellants primarily on the ground that there was an absence of the relationship of the employer and the employee between the parties. The specific claim was that the deceased Nikka Singh was not covered by the definition of a workman as given in section 2(n) of the Act. On the pleadings of the parties the following issues were framed :—

1. Whether the petitioners are entitled to the compensation as claimed by them ?
2. Whether the petitioners are competent to claim this amount ?”

On behalf of the petitioner-respondents, the material evidence of A.W. 2 Sukhdev Singh, A.W. 3 Des Raj, A.W. 4 Pritam Singh and A.W. 6 Bhagwan Kaur, widow of the deceased, was adduced. In

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rebuttal the appellants examined Shri B.C. Dhir R.W. 1 and Shri B.R. Bhasin R.W. 2 and produced the copy Exhibit R.W. 2/1. The trial Court considered both the issues together and held that the petitioners as the dependents of the deceased Nikka Singh were entitled to compensation and assessed the same at Rs. 3,500, only.

(3) The solitary contention forcefully advanced by Mr. J. N. Kaushal in support of the appeal is that the deceased Nikka Singh was in fact a sub-contractor who would not fall within the ambit of the definition of a workman under the provisions of the Act *qua* the appellants. Consequently it was argued that there existed no liability on the part of the appellants to pay any compensation to him.

(4) To appreciate the argument above-said one may first turn to the pleadings and particularly the application made on behalf of the respondents themselves. A free translation of the relevant part of para 1 of this application is in the following terms :—

“That seven persons, Nikka Singh son of Sukdev Singh, Pal Singh, Hazura Singh, Inder Singh sons of Mal Singh, Pritam Singh son of Chet Singh, Dev son of Chet Ram and Rup son of Nikka had jointly contracted with Tarsem Lal, a contractor of the Malwa Sugar Factory, Dhuri, on these terms. That loaded wagons of sugarcane were to be brought in by pushing them from within the railway limits up to the place of loading for these wagons and when they became empty they were again to be manually pushed back up to the railway limits. The contract was at the rate of Rs. 2/12/- per wagon.”

The above would, therefore, show that it was the case of the respondents themselves that the deceased along with six others had taken a sub-contract from a contractor of the appellants, namely, Tarsem Lal. This position seems to be unassailable and is further fortified from what has been expressly elicited in the cross-examination of A.W. 2 Sukhdev Singh who was examined as a witness by the respondents themselves :—

“I do not know at what rate Tarsem Lal was charging per wagon from the mill authority. We all were charging Rs. 2/12/- per wagon, not per head. Nikka Singh and

others used to earn Rs. 2/8/- per day to Rs. 4/- or Rs. 5/- per day. We all took contract from Tarsem Lal jointly."

Finally the trial Court itself on an overall consideration of the evidence arrived at the following finding :—

"Hence as discussed above, it is concluded that Nikka Singh being the sub-contractor died while working in the premises of the respondent on the weigh-bridge which is the property of the respondent."

From the above it is evident that there is overwhelming evidence and a conclusive finding that Nikka Singh deceased was in fact a joint sub-contractor with six others. This finding has not been and is in fact unassailable. The issue, therefore, is whether a sub-contractor would be entitled to get any compensation from the appellants under the provisions of the Act. The statute makes provisions primarily for the grant of compensation to workmen as defined therein. The relevant provision is section 2(n) of the Act which is in the following terms:—

"2(n) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) \* \* \* \*

(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule

II,

\* \* \* \*

\* \* \* \*."

The plain language of the statute makes it manifest that a sub-contractor is not within the definition above-quoted. Nikka Singh deceased who admittedly was one of the seven joint contractors who had taken a sub-contract from Tarsem Lal would, therefore, not be covered by the definition of the workman and would not be entitled to compensation thereunder.

(5) Mr. Sharma on behalf of the respondents even when pointedly asked to refer to any provision in the Act or the Schedules which entitle a sub-contractor to compensation has been unable to refer to the same. A vague reliance, however, was sought to be placed on the provisions of section 12(1) of the Act and on that basis it was argued that the deceased Nikka Singh would be entitled to the grant of compensation. The provisions relied upon is in the following terms:—

Section 12(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 any workman employed in the executive of the work any compensation which he would have been liable to pay if that workman 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 workman under the employer by whom he is immediately employed.”

A close perusal of the above-said provision would show that at the highest it makes the principal liable to pay compensation to a workman employed by his contractor. As is patent it makes no reference to any sub-contractor at all. The only rights that could accrue to Nikka Singh deceased for compensation under the above-said provision would be if it could be shown that he was a workman employed by Tarsem Lal contractor. The only answer to this query appears to be in the negative. It is significant that the above-quoted section 12(1) uses the word “workman” for the person employed under the contractor. Obviously, therefore, the word “workman” must be construed in accordance with the definition clause noticed earlier in section 2(n). One of the necessary requisites of the definition is that the person must be one employed on

monthly wages. In the present case far from their being any evidence to show that Nikka Singh deceased was employed on monthly wages there is conclusive evidence that he was never so employed and not even at a fixed daily wage. The evidence of Sukhdev Singh A.W. 2 already referred above would show that the deceased along with six others was a joint sub-contractor and his remuneration depended on the quantum of the work done over a fortnight and the amount received therefore was then distributed *inter se* between those seven persons. This being so Nikka Singh would not satisfy the test of employment of monthly wages and in fact being a joint sub-contractor no such issue of employment on monthly wages would arise. Therefore, even with the aid of section 12(1), the deceased cannot possibly be brought within the ambit of the definition of a workman. Consequently he would not be entitled to any compensation from the appellants as a matter of law.

(6) The appeal succeeds and the order of the authority is set aside. There will, however, be no order as to costs.

K.S.K.

APPELLATE CIVIL

Before D. K. Mahajan and Gopal Singh, JJ.

NATHU RAM,—Appellant.

*versus*

THE FATEHABAD CO-OPERATIVE MARKETING SOCIETY LTD.,

FATEHABAD.

Regular First Appeal No. 375 of 1964.

March 24, 1971.

*Punjab Co-operative Societies Act (XXV of 1961)—Section 82—Award by an arbitrator—Suit for declaration that the award is void for want of notice to the plaintiff—Jurisdiction of the civil Courts to hear such a suit—Whether barred under section 82.*

*Held*, that the jurisdiction of the civil Courts to hear a suit for declaration that an award given by an arbitrator is void for want of notice to the plaintiff is barred under section 82 of Punjab Co-operative Society Act.