

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

FAO No. 07 of 2014

Reserved on 21st March, 2025

Date of decision: 1st May, 2025

Geeta Devi and others

...Appellants

Versus

Deputy Commissioner, Shimla & another

...Respondents.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting? Yes

For the Appellant:

Mr. Balbir Singh Chauhan, Sr. Advocate
with Mr. Abhishek Thakur, Advocate.

For the Respondents:

Ms. Seema Sharma, Deputy Advocate
General.

Vivek Singh Thakur, Judge

Appellants have approached this Court against dismissal of their claim filed under Workmen Compensation Act, 1923 (in short 'WC Act') vide award dated 12th August, 2013 passed in Case No. WC Act/0300041/2012 titled Geeta Devi and others vs. Deputy Commissioner and another.

2

Brief facts of the case are that appellants are surviving legal heirs of deceased Ramesh Chand who had been employed as labourer through Mahatma Gandhi National Rural Employment Guarantee Act (in short 'MNREGA'). On 7th February, 2009, while he was on duty in course of his employment under MNREGA Scheme and was doing work of

cutting, a boulder from upper side fell and struck on the chest of the deceased. Immediately after the occurrence deceased was brought to hospital, where he died.

3 In aforesaid facts and circumstances, claim petition was filed for grant of compensation along with interest at the rate of 12% per annum from the date of accident till its realization and to impose penalty to the extent of 50%.

4 It has been claimed by appellants that at the time of accident, 44 years old deceased was workman as defined under WC Act. It is further case of the appellants that no notice under Section 10 of WC Act was given to respondents because the accident was well within their knowledge and regarding accident, FIR had also been lodged in Police Station Kumarsain.

5 It is the claim of appellants that respondents are legally bound to pay compensation along with interest and penalty because they have failed to deposit the compensation within stipulated period.

6 Claim petition was contested by respondents on various grounds including that petition was barred by limitation, appellants were estopped from filing the petition on account of their act and conduct, it was bad for non-joinder of necessary parties, and case was not falling under the purview of WC Act as there was no employer and employee's relationship between the parties or contract of service with or control of the Government over the deceased. It was further stated in the reply that

deceased was engaged on his own request under MNREGA Act which is a special Act under the Government of India and under the said Act, as provided, appellants have been duly compensated by giving Rs.25,000/- to wife of deceased i.e. appellant No.2 Mani Devi on 10th February, 2009 and 23rd April, 2009 in two installments.

7 It is the stand of respondents that deceased was not workman as defined under WC Act because he was engaged casually by the Gram Panchayat, but not by the respondents and thus respondents are not employers of deceased. Further that deceased was engaged by the Gram Panchayat on the basis of demand of work raised/given by deceased under the MNREGA Act.

8 It has been further contended on behalf of respondents that MNREGA is a Special Act, which provides payment of compensation in it, and thus case of deceased Ramesh Chand does not fall under WC Act. Further that no notice under Section 10 of WC Act has been issued to respondents which was mandatory. It has been claimed that respondents No.1 and 2 are not liable to pay any compensation to appellants for want of employer and employee's relationship as well as for not serving the notice.

9 Appellants have reiterated their stand as per the claim petition and have denied all objections raised by respondents.

10 Following issues were framed by Commissioner, under Employees Compensation Act, 1923 on 11th September, 2012:-

1. Whether the deceased was a workman within the meaning of W.C. Act, as alleged?OPP
2. Whether accident occurred during the course of employment of deceased?OPP
3. Whether the amount of compensation claimed due from respondents?OPP
4. Whether the respondents are liable to pay the amount of compensation?OPP
5. Whether the present petition is barred by limitation?OPR
6. Whether the claimants are estopped from filing the petition due to their own act and conduct? ..OPR
7. Relief

11 After adjudicating the matter, the Commissioner under WC Act (now Employees Compensation Act) held that appellants have failed to prove and establish that deceased Ramesh Chand was workman within the meaning of WC Act and accordingly, it was held that despite the death of deceased Ramesh Chand during the course of employment, for absence of evidence and record regarding relationship of employer and employee between the deceased and respondents, appellants were not entitled for compensation, interest thereon and penalty for non-payment of compensation under WC Act within the prescribed period and, therefore, it was held that appellants are not entitled to claim any compensation from the respondents.

12 This appeal was admitted on the following substantial questions of law:-

1. Whether the Commissioner, Employees Compensation has erred in law in not appreciating the provisions of Section 2(1) dd, 2(d) and Schedule II of The Employee Compensation Act, 1923 and thus resulting in error of law apparent on face of record. If so its effect?

2. Whether the Commissioner, Employees Compensation has erred in law in not appreciating that there exist relationship of employer and employee between the deceased and the respondents especially when the evidence qua the employment has been brushed aside by wrongly appreciating the evidence and provisions of the MNREGA Act, thus resulting in wrong findings. If so its effect?

3. Whether the Commissioner, Employees Compensation has erred in law in not appreciating the evidence on record that the deceased was workmen within the meaning of Act, taking ex-gratia payment Rs.25,000/- as full and final payment under the provisions of MNREGA Act, thus resulting in wrong findings qua deceased as workmen. If so its effect?

13 Learned counsel for the appellants has submitted that Government of India has formulated and circulated the Guidelines for mechanism, to provide ex-gratia payment to eligible e-Shram registrants by launching e-Shram portal on 26th August, 2021, for creation of a comprehensive 'National Database of Unorganized Workers' seeded with Aadhaar.

14 Above referred Guidelines provide provisions for providing compensation/financial help to the unorganized workmen on suffering an accident defined as a “sudden, unforeseen and involuntary event caused by external, violent and visible means”. In these Guidelines, for death due to accident a sum of Rs. 2 lacs has been declared payable to the family of deceased workman.

15 Learned counsel for appellants submits that in aforesaid Guidelines, as per eligibility criteria, those unorganized workers will be eligible to initiate claim, who were registered on e-Shram portal on or before 31st March, 2022 and are covered within the definition as mentioned in Guidelines.

16 Referring the aforesaid Guidelines, learned counsel for appellants submits that deceased Ramesh Chand was also unorganized labourer and, therefore, on account of his death, during the course of employment, appellants must be provided financial help/ex-gratia grant.

17 Learned Deputy Advocate General submits that perusal of Guidelines depicts that all unorganized workers, who were registered on e-Shram on or before 31st March, 2022, will be eligible to initiate claim for payment of ex-gratia/compensation and deceased was not so registered.

18 Learned Deputy Advocate General, referring judgment passed by the High Court of Tripura in case ***Rirasatnai Halam vs. State of Tripura and others*** reported in ***2018 SCC OnLine Tri 115***, has submitted that deceased Ramesh Chand was not workman/employee

within the meaning of Section 2(dd) of the Employees' Compensation Act, 1923 and therefore, appellants are not entitled for any compensation under WC Act/Employees' Compensation Act. She has submitted that only Rs.25,000/- ex-gratia grant/payment was payable to wife of deceased and the same has already been paid by the State and therefore, there is no ground for interfering in the award passed by the Commissioner under WC Act/EC Act.

19 MNREGA was enacted to provide the enhancement of livelihood security of the households in rural areas of country by providing at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith or incidental thereto.

20 Section 3 of the Act provides that Central Government shall provide to every household whose adult members volunteer to do unskilled manual work not less than 100 days of such work in a financial year in accordance with the Scheme made under this Act.

21 In Himachal Pradesh Government, Rural Employment Guarantee Scheme 2006 has been formulated and notified by exercising the powers under Section 4(1) of MNREGA. In Clause 3 of the Scheme, it has been provided that entitlement of 100 days guaranteed employment in the financial year is in terms of household, and 100 days entitlement of a household may be shared among the members of household, and within the said entitlement all adult members of household can register

and apply for work, provided that they are local residents and willing to manual work. They may apply as an undivided or a household to the Gram Panchayat at village level.

22 This Scheme notified under MNREGA provides that 100 days guaranteed employment/wages is for the household or individual registered under the Act/Scheme and 100 days entitlement of household may be shared amongst the members of that household. Therefore, it is not an employment to a particular person but is a Scheme to provide work for 100 days in a financial year to the household.

23 Though Section 28 of the MNREGA provides that provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law, however, it does not mean that Scheme makes the definition of workman or employer and employees or other provisions of Workmen/Employees Compensation Act redundant. This overriding effect is to be considered with reference to the object of the Act and the Scheme made thereunder as well as nature of work to be provided under it.

24 Section 2(dd) the the Employees' Compensation Act, 1923 reads as under:-

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

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(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;]”

25 It is evident that deceased Ramesh Chand can never be treated as employee under WC Act in terms of any of Clauses contained in Section 2(dd)(ii).

26 After considering provisions of Workmen/Employees Compensation Act as well as that of MNREGA and Scheme formulated

thereunder, I am of considered opinion that persons engaged under MNREGA cannot be considered in the employment of the State for claiming rights under the Workmen/Employees Compensation Act.

27 Once it is clear that MNREGA worker is not covered under the definition of Employees' Compensation Act/WC Act, there is no right to claim compensation under WC Act for death of a person employed under MNREGA/Scheme under MNREGA even if the said death has occurred during the course of employment.

28 It is also relevant to refer that Scheme 2006, in Clause 12, provides entitlement to receive payment of compensation as per provisions of the Payment of Wages Act 1936 for non-payment of wages. This Clause also provides payment of ex-gratia grant of Rs.25,000/- or such amount as may be notified by Central Government in case of death or permanent disability by accident arising out of and in the course of employment. This Clause provides not only implied but explicit exclusion of applicability of Workmen/Employees Compensation Act in case of employment under MNREGA and/or Scheme framed thereunder.

29 Plea of learned counsel for appellants that for mechanism provided in the Guidelines to provide ex-gratia payment to unorganized workers, appellants are entitled for the benefits under MNREGA Scheme, is not tenable for the provisions of Guidelines which provide that those unorganized workers who have been registered on eShram portal till 31st March, 2022 are entitled for the scheme benefits including benefits under

the Pradhan Mantri Suraksha Bima Yojana (PMSBY) and further that insurance benefits cannot be provided retrospectively. Deceased Ramesh Chand was neither registered on e-Shram nor he could have been registered. At the time of his employment and death, there was no such scheme to provide ex-gratia payment to unorganized workers under Pradhan Mantri Suraksha Bima Yojana or any other scheme. Moreover, Guidelines clearly say that benefits cannot be provided retrospectively.

30 Plea of learned counsel for appellants that every unorganized workers, irrespective of their registration, on e-Shram portal, who suffer injury or death before registration as unorganized workers, should be provided benefits of Guidelines, is not sustainable unless or until Guidelines are modified to such extent or provisions of Guidelines are assailed and held ultra-vires to the extent these provide grant of benefits prospectively only that too on registration of e-Shram portal. This issue cannot be adjudicated and decided in this appeal. Appeal is to be decided on the basis of existing provisions of law as applicable to the case.

31 In view of above discussion, there is no merit in the appeal and substantial questions of law are answered in aforesaid terms.

Consequently, appeal is dismissed.

(Vivek Singh Thakur),
Judge.

1st May, 2025
(MS)