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M/S. SUNIL INDUSTRIES

v.

RAM CHANDER PRADHAN AND ANR.

NOVEMBER 14, 2000

B

[S. RAJENDRA BABU AND AND S.N. VARIAVA, JJ.]

Labour Laws:

C *Workmen's Compensation Act, 1923—Claim under—Contention that only those persons who are employed in a factory within the meaning of the factories Act, 1948 would be entitled to make a claim under the Workmen's Compensation Act—Propriety of—Held, for the Workmen's Compensation Act to apply it is not necessary that the workman should be working in a factory as defined in the Factories Act—Workmen's Compensation Act merely clarifies* D *that persons employed, otherwise than in a clerical capacity, in any premise wherein a manufacturing process defined in clause (k) of Section 2 of the Factory Act is carried on, are workmen—Significantly the definition of the term 'factory' as appearing in the Factories Act, has not been incorporated in the Workmen's Compensation Act—Sections 2(n)(ii), 30, Schedule II item II—Factories Act, 1948—Sections 2(k), 2(m).*

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Appellant, a sole proprietory concern, ran its workshop of shaping steel sheets into various shapes and forms. The 1st respondent at the relevant time was working as a press operator with the appellant. He sustained injuries to his right index finger and thumb while working on a press as a result of F **which his right index finger was amputated.**

The 1st respondent filed a claim under the Workmen's Compensation Act claiming compensation which was allowed. The appellant preferred an appeal under Section 30 of the Workmen's Compensation Act before High Court which was dismissed *in limine*. Hence the present appeal.

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On behalf of the appellant, it was contended that the Workmen's Compensation Act did not apply to the appellant's establishment; that a joint reading of Section 2(n)(ii) and Schedule II of the Workmen's Compensation Act, 1923 and Sections 2(k) and 2(m) of the Factories Act, 1948 makes it clear that even for the purposes of the Workmen's Compensation Act only

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those persons who are employed in a factory within the meaning of the Factories Act, 1948 would be entitled to make a claim under the Workmen's Compensation Act. A

Dismissing the appeal, the Court

HELD : 1. It is true that the Workmen's Compensation Act, 1923 has been amended on a number of occasions. However, inspite of numerous amendments the Legislature has purposely omitted to specifically provide that only a workman who is employed in a factory, as defined in the Factories Act, could make a claim. All that has been done is that in Schedule II of the Workmen's Compensation Act it is *inter-alia* clarified that persons employed, otherwise than in a clerical capacity in any premises wherein a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 is carried on, are workmen. Significantly, the definition of the term "Factory" as appearing in clause (m) of Section 2 of the Factories Act, 1948 has not been incorporated in the Workmen's Compensation Act. Thus it is clear that for the Workmen's Compensation Act to apply it is not necessary that the workman should be working in a Factory as defined in the Factories Act, 1948. It has not been denied that the workshop of the Appellant would fall under clause (k) of Section 2 of the Factories Act. Therefore, the 1st Respondent would be a Workman within the meaning of the term as defined in the Workmen's Compensation Act. [579-B-E] B C D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2231 of 1998.

From the Judgment and Order dated 7.5.97 of the Punjab and Haryana High Court in F.A.O. No. 827 of 1997.

Kailash Vasdev for the Appellant. F

The Jugdment of the Court was delivered by

S. N. VARIAVA, J. This Appeal is against an Order dated 7th May, 1997 by which the first appeal filed by the appellant has been dismissed in limine. G

Briefly stated the facts are as follows:

The appellant is a sole proprietory concern. It runs its workshop of shaping steel sheets into various shapes and forms. The 1st Respondent was, at the relevant time, working as a press operator with the Appellant. On 27th January, 1993 while working on a press, the 1st Respondent sustained injuries H

A to his right index finger and thumb. The Appellant rushed the 1st Respondent to the Civil Hospital at Gurgaon (Haryana). The injuries necessitated amputation of 2.5 x 0.5 Cms. of the index finger.

On 14th June, 1993, the 1st Respondent filed a claim under the Workmen's Compensation Act, 1923 claiming compensation in the sum of Rs. 25,000 with
B interest thereon @ 16% per annum. The Appellant in his reply, *inter alia*, claimed that the provisions of the Workmen's Compensation Act would not apply to his establishment.

On 15th October 1996 the Commissioner held that the Workmen's
C Compensation Act applied and that the Appellant was liable to pay compensation in a sum of Rs. 29,814 together with Rs. 5,000 as penalty and interest at 12% per annum.

The Appellant preferred an Appeal under Section 30 of the Workmen's Compensation Act before the High Court of Punjab & Haryana. That Appeal
D came to be dismissed in limine by the impugned order dated 7th May, 1997.

It is admitted that the 1st Respondent was working as a press operator with the Appellant at the relevant time. It is admitted that the accident did take place on 27th January, 1993 and that it resulted in injuries to the right index finger and thumb of the 1st Respondent and that this necessitated
E amputation of 2.5 x 0.5 Cms. of the index finger. Mr. Vasdev however, submitted that the Workmen's Compensation Act did not apply to the Appellant's establishment. He submitted that Section 2(n) (ii) of the Workmen's Compensation Act provides that a workman is a person employed in a capacity specified in Schedule II. He then referred to Schedule II of the Workmen's Compensation Act and pointed out that under item 2 of Schedule II a person
F would be a workman provided he is employed in any premises where a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948 was being carried on. He submitted that this showed that the provisions of the Factories Act were being incorporated into the Workmen's Compensation Act. He submitted that this is also clear from the fact that over
G the years there have been a number of amendments to the Workmen's Compensation Act incorporating therein provision of the Factories Act or provisions similar thereto. He then referred to Section 2(k) and 2 (m) of the Factories Act and submitted that under the Factories Act the manufacturing process must be in a factory where ten or more workers are working (if the manufacturing process is being carried on with the aid of power) or twenty
H or more persons are working (if the manufacturing process is being carried

on without the aid of power). He submitted that a joint reading of all these provisions makes it clear that even for the purposes of the Workmen's Compensation Act only those persons who are employed in a factory within the meaning of the Factories Act, 1948 would be entitled to make a claim under the Workmen's Compensation Act. A

We are unable to accept the submissions of the learned counsel. It is true that the Workmen's Compensation Act, 1923 has been amended on a number of occasions. However, inspite of numerous amendments the Legislature has purposely omitted to specifically provide that only a workman who is employed in a factory, as defined in the Factories Act, could make a claim. All that has been done is that in Schedule II of the Workmen's Compensation Act it is *inter alia* clarified that persons employed otherwise than in a clerical capacity, in any premises wherein a manufacturing process as defined in clause (k) of Section 2 of the Factories Act, 1948, are workmen. Significantly the definition of the term "Factory" as appearing in clause (m) of Section 2 of the Factories Act, 1948 has not been incorporated in the Workmen's Compensation Act. Thus it is clear that for the Workmen's Compensation Act to apply it is not necessary that the workman should be working in a Factory as defined in the Factories Act, 1948. It has not been denied that the workshop of the Appellant would fall under clause (k) of Section 2 of the Factories Act. Therefore, the 1st Respondent would be a Workman within the meaning of the term as defined in the Workmen's Compensation Act. B C D E

Under the circumstances, we see no merit in the appeal. The same stands dismissed. There will, however, be no order as to costs.

M.P. Appeal dismissed.