

ZILA SAHAKARI KENDRA BANK MARYADIT

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v.

SHAHJADI BEGUM AND ORS.

SEPTEMBER 29, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

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*Workmen's Compensation Act, 1923; Ss. 2(e) and 30:*

*Hiring of a jeep from a bank by State authorities for election duty—Driver of the jeep met with an accident and died while doing cleaning of septic tank at the residence of the authority—Wife of the deceased claiming compensation from employer-bank on the ground that death of her husband caused during the course of employment—Allowed by Commissioner, Workmen Compensation—Appeal dismissed by High Court—On appeal. Held: Owner of the jeep, the bank was bound to follow the order of requisitioning authority as it was required for election duty—Services of the deceased were placed under the control of the requisitioning authority, thus employer would be the State Government—Commissioner of Workmen Compensation committed a jurisdictional error in directing the bank to deposit compensation amount as the deceased was in effect and substance under the control of the requisitioning authority—Since the order so passed was wholly without jurisdiction, the same is a nullity—High Court also erred in not condoning the delay in filing the appeal and affirming the order passed by the Commissioner—In the facts and circumstances of the case, it could be appropriate to direct the State Government to reimburse to the bank the compensation amount as deposited by it—Directions issued.*

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*'Employer' and 'employee'—Meaning of in the context of the Workmen's Compensation Act, 1923.*

**Appellant is a cooperative bank. It owned a jeep, which was requisitioned by Respondent No.2 for election duty. The driver of the jeep, for all intent and purport, was under the control of Respondent No.4 District Election Officer. Allegedly, Respondent No.2 instructed the said driver to help the workers in cleaning the septic tank at his residence. In the process, an accident took place resulting in the death of the driver. Respondent No. 1-wife of the deceased**

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**A** filed a claim petition claiming compensation under the Workmen's Compensation Act, 1923 before the Commissioner of Workmen Compensation. She had also filed an application for her employment on compassionate ground. Commissioner, Workmen Compensation, held that the deceased workman died during the course of employment with the appellant-bank. Appellant-bank preferred an appeal under Section 30 of the Act in the High Court with an application for condonation of delay. Rejecting the application for condonation of delay and dismissing the appeal, the High Court directed the bank to deposit the compensation amount. Hence the present appeal.

**C** Partly allowing the appeal the Court

**D** HELD:1.1. The Workmen's Compensation Act was enacted to provide for payment of compensation for injury by accident. The term 'employer' has been defined in Section 2(e) of the Act. However, the term "employee" has not been defined in the Act. The definition of employer therefore, embraces within its fold not only a person who employs another either permanently or on temporary basis but also those who were in control of the workman temporarily lent or let on hire to them by the persons with whom the workman has entered into a contract of service. [815-H; 816-C]

**E** 1.2. In the present case, the owner of the jeep was bound to comply with the order of requisition of a vehicle when the same is required to be placed on election duty. Since the deceased was under the control of the bank and in effect and substance under the control of Respondent No.2, the Commissioner of Workmen Compensation committed jurisdictional error in directing the appellant to deposit the amount of compensation. The High court, in that view of the matter, should have taken a liberal view in the matter and condoned the delay in filing the appeal as also depositing the awarded amount in Court. The order passed by the Commissioner of Workmen Compensation was wholly without jurisdiction, the same was a nullity. It was *coram non judge*, [816-D-E-F]

**G** 1.3. It has been found as of fact by the Commissioner of Workmen Compensation that the deceased was under the complete control of the requisitioning authority. He would, therefore, be the employer. As the jeep was requisitioned under a statute, the bank had no other option but to put the same under the services of the requisitioning authority. In terms of requisition, the services of the deceased, thus, were also placed. The employer, thus, would be the requisitioning authority, namely, the State. Therefore, the requisitioning

authority is liable to pay the amount of compensation. Although the State is not a party before this Court, keeping in view the fact that Respondent No.2 was its employee and a jeep was requisitioned under the authority of the District Election Officer, interest of justice would be subserved if appellant-bank is directed to be reimbursed in respect of the amount which has already been deposited by it in terms of the order of the Commissioner of Workmen Compensation. [816-F-G-H; 817-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4328 of 2006.

From the final Judgment and Order dated 13.4.2004 and 5.1.2004 of the High Court of Madhya Pradesh at Jabalpur in M.A. No. 1797 of 2003 and in LPA No. 952/2004 respectively.

Prakash Shrivastava for the Appellant.

M.P. Singh and B.S. Banthia for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

Appellant herein is a cooperative bank. It owned a jeep. The deceased was the driver of the said jeep. The jeep was requisitioned by Respondent No. 2 for election duty. Respondent No. 4 herein was the District Election Officer. The driver for all intent and purport was under his control. On 5.5.1999, the deceased while performing his duties stayed at the residence of Respondent No. 2. The work of cleaning of septic tank at his house was going on. There was a leakage of gas from the said septic tank. The deceased allegedly on instructions of Respondent No. 2 entered the septic tank to help the workers working therein. In the process, an accident took place resulting in his death.

Respondent No. 1 filed a claim petition claiming compensation under the Workmen's Compensation Act, 1923 (for short, 'the Act') before the Commissioner of Workmen Compensation: She had also filed an application for her employment in the Collectorate on compassionate ground. In the said application, apart from Appellant, the Sub-Divisional Officer and the District Election Officer were impleaded as parties.

In the said proceedings, *inter alia*, the following issue was raised:

A “1. Whether Dara Khan died during the course of the employment due to the reason of becoming unconscious on account of the poisonous gas coming out from the latrine tank of the non-applicant no. 2 and then felling down in the same?”

The said issue was answered thus :

B “1: That” Dara Khan, the husband of the applicant had been employed as a driver of the jeep under the control of the non-applicant No. 1.

C 2. That on acquiring the vehicle by the District Election Officer for the election work, Dara Khan was working under the opposite party no. 2 along with the jeep under the direction of the non-applicant no. 1”

It was further held that the employee being bound by the orders of the senior officers and had been staying in the jeep as a part of his duty, the allegations made in the application under the Act proved stating :

D “... That it is the duty of the employee to follow the order of his superior. That if any senior official gives the direction for doing the work other than the work allotted to him then the said defence would not be an acceptable one that the worker is not on the duty. That on account of the accident been occurred in the work other than the allotted work the defence would not be acceptable that the accident of the worker is not the result of the employment. Whereas on doing the other work on the direction of the senior official if an employee met with an accident then the same would also be considered as the part of the employment.”

F However, on the premise that it was Appellant who had placed his services with Respondent No. 2, the Commissioner of Workmen Compensation opined:

G “That had his duty been not there then the question .of his going to Rewa does not arise at all and then the question of his going to the latrine tank and meeting with an accident and death also would not have been arisen. In this way the death of the worker Dara Khan after meeting with an accident on date 5.5.99 during the course of his employment under the non-applicant no. 1 and also as a result of his death in the employment is proved. The death of Dara Khan is the result of his employment. The accident which has taken place during

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the course of the employment related to the Workman Compensation Act and on the basis of the interpretation of the presumptive detail the worker Dara Khan died during the course and as a result of his employment under the non-applicant no. 1 and the said fact is proved. That after the aforesaid interpretation the disposal of the suit issue no. 1 has been decided in 'Yes'. That in the order of exhibit D-5 proved by the Witness of the Opposite party no. 1 he himself has accepted that Dara Khan died on 5.5.99 in Rewa in an accident due to the reason of been felling down in the Septic tank. That Dara Khan died during the course of his working for the bank..."

Appellant preferred an appeal under Section 30 of the said Act in the High Court of Judicature at Jabalpur. 'The said appeal was numbered as Misc. Application No. 1797 of 2003. It is not in dispute that there was some delay in filing the application. The deposit of the amount in terms of Sub-section (2) of Section 30 of the Act was also made after some delay. The High Court by reason of the impugned judgment did not go into the merit of the matter and dismissed the said appeal holding: .

"...The Bank was very much aware of passing of the award. It was not an *ex parte* award. Thus, we find that reason assigned is incorrect. The reason that officer-in-charge came to know on 12.8.2003 is *prima facie* incorrect and shows lack of diligence. Apart from that deposit has not been made of amount at the time of filing of the appeal U/s 33 of the Act. It has been deposited subsequently on 20.8.2003. We are not satisfied that there is any sufficient cause shown for condoning the delay in the instant case. The "deceased Dara Khan" was assigned the duty by the Bank in connection with election is not in dispute. He was paid salary by the bank for the period in question; hence award had been passed by Commissioner. We find no sufficient ground to condone the delay."

Appellant is, thus, before us.

The short question which arises for consideration is as to whether the defendant Nos. 2 and 4 and consequently the State should be directed to reimburse Appellant so far as the amount of compensation payable to Respondent No. 1 is concerned.

The Act was enacted to provide for payment by certain classes of employers to their workmen of compensation for injury by accident. The term

A 'Employer' has been defined in Section 2(e) of the Act in the following terms:

“employer” includes any body 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 workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;”

However, the term 'employee' has not been defined in the Act. The definition of employer, therefore, embraces within its fold not only a person who employs another either permanently or on temporary basis but also those who were in control of the workman temporarily lent or let on hire to them by the person with whom the workman has entered into a contract of service. It is, therefore, a broad definition.

Indisputably, the owner of the jeep was bound to comply with the order of requisition of a vehicle when the same is required to be placed on election duty. If the deceased was under the control of the Bank herein and in effect and substance under the control of Respondent No. 2, the Commissioner of Workmen Compensation committed jurisdictional error in directing Appellant to deposit the amount of compensation. The High Court, in that view of the matter, should have, in our considered view, taken a liberal view in the matter and condoned the delay in filing the appeal as also depositing the awarded amount in Court. If the order passed by the Commissioner of Workmen Compensation was wholly without jurisdiction, the same was a nullity. It was a *coram non judge*. It has been found as of fact by the Commissioner of Workmen Compensation that the deceased was under the complete control of the requisitioning authority. He would, therefore, be the employer. As the jeep was requisitioned under a statute, the bank had no other option but to put the same under the services of the requisitioning authority. In terms of requisition, the services of the 'deceased, thus, were also placed. The employer, thus, would be the requisitioning authority, namely, the State of M.P.

We, therefore, are of the opinion that the requisitioning authority is liable to pay the amount of compensation. Although the State of M.P. is not a party before us, keeping in view the fact that Respondent No. 2 was its employee and a jeep was requisitioned under the authority of the District Election Officer, interest of justice would be subserved if Appellant herein is

directed to be reimbursed in respect of the amount which has already been deposited by him in terms of the order of the Commissioner of Workmen Compensation. The amount deposited by Appellant shall be returned to it within eight weeks from today failing which the same shall carry interest at the rate of 6% per annum from the said date till the actual payment. **A**

This appeal is allowed to the aforementioned extent. No costs. **B**

S.K.S.

Appeal partly allowed.