

Before R. N. Mittal, J.

GURDAS MAL,—Appellant.

versus

MST. AMBO AND OTHERS,—Respondents.

F.A.O. No. 228 of 1975.

September 16, 1983.

*Workmen's Compensation Act (VIII of 1923)—Section 2(1) (n) and Schedule II Clause XXX—Employer carrying on business of agriculture—Electric motor fell in tubewell installed in the fields—Labourer employed to lift electric motor meeting with an accident—Such labourer—Whether a 'workman'—Words and phrases—Word 'business'—Meaning of.*

*Held*, that the word 'business' means any particular occupation or employment habitually engaged in, especially for livelihood or gain. It also means anything which occupies the time and attention and labour of a man for the purposes of profit. Where the employer was carrying on agriculture for earning his livelihood and the tubewell was situated within the agricultural land which was irrigated by its water, the labourer who had been employed to lift the electric motor that had fallen in the tubewell would squarely fall within the definition of 'workman' as he was employed for the purposes of the employer's business within the meaning of section 2(1) (n) of the Workmen's Compensation Act, 1923.

(Paras 6 and 7).

*First Appeal from the order of the Court of Shri K. C. Dewan, P.C.S. Commissioner under the Workmanship's Compensation Act, Gurdaspur, dated 31st March, 1975 accepting the application with costs and directing the respondent to pay Rs. 7000 as compensation for the death of the workman Amanat Masih, to the applicants by 5th May, 1975.*  
C.M. No. 3545—CII of 1983 :

*Application Under Order 23 Rule 3 read with section 151 CPC praying that the orders may be passed in the above noted FAO in the terms of attached compromise.*

C.M. No. 3650—CII—1983 :

*Application Under Order 32 Rule 7 read with section 151 CPC praying that the necessary permission for entering into compromise may please be granted to the applicant-respondent.*

O. P. Goyal, Advocate, for the appellant.

T. R. Arora, Advocate, for the respondents.

## JUDGMENT

*Rajendra Nath Mittal, J.*

(1) This is an appeal against the order of the Commissioner under the Workmen's Compensation Act, Gurdaspur, dated 31st March, 1975, granting an amount of Rs. 7,000 to the claimants:

(2) Briefly, the facts are, that Gurdas Mal, employer is an agriculturist engaged in the business of agriculture. He had installed a tubewell in his field which was run by an electric motor. The electric motor fell down 10 feet below the surface level of the land. The employer employed Amanant and other labourers for taking it out of the pit. The labourers had worked for about seven days before the 12th September, 1973, the date of the accident. It is stated that the deceased along with the respondent and uncle of the latter were inside the pit on the date of the accident. The walls of the pit collapsed and all the three received injuries. Amanant's injuries proved fatal. It is alleged that the deceased was employed at the rate of Rs. 5 per day and thus his monthly wages were Rs. 150. The claimants filed an application under the Act claiming a sum of Rs. 10,000 as compensation.

(3) The application was contested by the respondent who pleaded that the electric motor and the tubewell did not belong to him but belonged to his brother Parkash Lal. He further pleaded that the deceased was in the employment of Mohinder Singh, contractor working at the tubewell and was a casual labourer at Rs. 60 P.M. He denied that the deceased was in his employment.

(4) The Commissioner held that the deceased was a workman and that he was in the employment of the respondent and died during the course of employment. He further held that the claimants were entitled to Rs. 7,000 as compensation. Consequently, he allowed the application and directed the respondent to pay Rs. 7,000 as compensation to the claimants. The employer has come up in appeal to this Court.

(5) The first question that has been raised by Mr. Goyal is that the deceased was not employed by the appellant. He argues that the evidence has not been properly appreciated. I regret my inability to accept the contention. An appeal under the Act is

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maintainable on substantial question of law and the finding of fact arrived at by the Commissioner cannot be allowed to be agitated in appeal. The present question relates to finding of fact and, therefore, Mr. Goyal cannot be permitted to raise it.

(6) The second question that has been raised by Mr. Goyal is that the deceased was not a workman. According to Mr. Goyal, the employment of the deceased was of a casual nature and not for the purposes of employer's business. I regret my inability to accept this contention as well. In order to determine whether the deceased was a workman or not, it will be advantageous to read the definition of the word 'workman' as given in section 2(1) (n) of the Act, which reads as follows :—

“‘workman’ means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business) who is—

(i) ... ..

(ii) employed on monthly wages not exceeding one thousand rupees in any such capacity as is specified in Schedule II,

The relevant clause of Schedule II is clause (xxx), which is set out below :—

“employed, otherwise than in a clerical capacity, in the construction, working repair or maintenance of a tubewell; or”.

From a reading of the definition of the word “workman” and clause “xxx”, it is evident that if a person draws monthly wages not exceeding Rs. 1,000 and is employed in the construction or repair of a tubewell, he is a workman. However, if his employment is of a casual nature and he is employed otherwise than for the purpose of employer's trade or business, he will not be deemed to be so. Even if it may be assumed that the deceased's employment was of a casual nature, the matter that arises for consideration is whether he was employed for the purpose of employer's business. The word “business” has been defined in Webster's New International Dictionary (Second Edition) as “any particular occupation

or employment habitually engaged in, esp. for livelihood or gain". In Halsbury's Laws of England, Second Edition, the said word has been defined as follows :—

“‘Business’ means anything which occupies the time and attention and labour of a man for the purposes of profit.”  
(See Vol. XXXIV, page 808).

Also see *Smith v. Anderson* (1)

(7) In the present case, there is evidence that the employer was carrying on agriculture for earning his livelihood and the tubewell was situated within the agricultural land which was irrigated by its water. In the circumstances, I am of the view that the deceased squarely falls within the definition of ‘workman’. In the above view, I am fortified by the observations in *Popatlal Mayaram v. Bai Lakhu Jetha* (2), *T. N. Sitharama Reddiar v. A. Ayyaswami Gounder* (3), and *Ghasiram Motiram Kulmi and others v. Smt. Nanibai Nathulal and another* (4). In *Popatlal Mayaram’s case* (supra), an agriculturist engaged a person to excavate an old well to make it deeper so that it could give sufficient water for irrigation. While working inside the well, a pipe fell and the workman died. The question arose whether he was a workman within the meaning of section 2(1)(n) of the Act. The learned Division Bench held that the person, though a casual worker, was employed for the purposes of the employer’s business and was a workman within the meaning of the Act. The facts of *T. N. Sitharama Reddiar’s case* (supra), are similar. In that case too, an agriculturist engaged a band of diggers to deepen his well. One of the workers received an injury during the digging operation. It was held that he was a workman and was entitled to compensation. Similar view was taken in *Ghasiram Motiram Kulmi’s case* (supra). Consequently, I affirm the judgment of the Commissioner.

(8) For the aforesaid reasons, I do not find any merit in the appeal and dismiss the same with costs. Costs Rs. 300.

N.K.S.

- (1) (1880) 15 Ch. D 247.
- (2) AIR 1952 Saurashtra 74,
- (3) AIR 1956 Madras 212.
- (4) AIR 1960 Madhya Pradesh 267.