

the other was also sold. Therefore this argument is also repelled.

The result therefore would be that in case where merger is pleaded apart from the provisions of section 111 of the Transfer of Property Act it will have to be determined in each case as to what was the intention of the owner of the bigger estate. Did he intend to keep the smaller estate alive or did he intend at the time when he acquired the bigger estate that the smaller estate should merge and be wiped out. This is a question which the learned Single Judge has not determined and, therefore, in our view it will be proper to allow this appeal, set aside the judgment of the learned Single Judge and remit the case to him for decision as to what was the intention of Gian Chand Sham Chand at the time when they acquired the equity of redemption vis-a-vis their tenancy rights.

The costs would be costs in the cause.

Parties are directed to appear before the learned Single Judge on the 12th October, 1962.

#### CIVIL MISCELLANEOUS

*Before J. S. Bedi, J.*

CHOPRA PRINTING PRESS,—Appellant.

*versus*

DES RAJ,—Respondent.

First Appeal from Order No. 156 of 1960.

*Workmen's Compensation Act (VIII of 1923)—Ss. 4 and 5—Minimum Wages Act (XI of 1948)—Ss. 3 and 25—Workman getting Rs. 35 per mensem as wages at the time of the accident—Minimum wages fixed for such workmen at Rs. 60*

1962

December, 5th.

M/s Gian Chand-Sham Chand

v.

M/s Rattan Lal-Krishan Kumar and others

Mahajan, J.

*per mensem by notification of the government—Compensation payable—Rate applicable—Whether Rs. 35 or Rs. 60 per mensem.*

*Held*, that a workman cannot contract out of the provisions of the Minimum Wages Act as provided in section 25 of the Act. Although the workman was getting Rs. 35 per mensem as wages at the time of the accident, he shall be deemed to have been getting Rs. 60 per mensem, the minimum wages fixed for such workmen by a notification of the government. The compensation to be allowed to the workman for the injury sustained by him as a result of the accident will, therefore, be determined at the rate of Rs. 60 per mensem and not Rs. 35 per mensem.

*First Appeal from the Order of the Court of Shri Kartar Singh, Senior Sub-Judge, Jullundur and Commissioner under Workmen Compensation Act, 1923, dated 4th November, 1960 directing the respondent to pay Rs. 1,512 to the petitioner within one week.*

Roop Chand, Advocate,—for the Appellant.

Ved Vyas, Advocate,—for the Respondents.

#### JUDGMENT

Bedi, J.

BEDI, J.—Des Raj, an employee of Chopra Printing Press, Jullundur, made an application against Tilak Raj Suri, Proprietor of the Press for the recovery of Rs. 1,764 by way of compensation under the Workmen's Compensation Act. While working in the press he lost his right arm below the elbow. The application was resisted by the respondent raising various pleas which gave rise to the following issues:—

- (1) Whether the petitioner sustained the injury on 25th November, 1959, in an accident arising out of and in the course of his employment in the respondent Press ?

- (2) Whether the applicant was drawing on the day of accident Rs. 60 per mensem ?
- (3) To what amount as compensation is the petitioner entitled ?

Chopra Printing  
Press  
v.  
Des Raj  

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Bedi, J.

After recording the evidence led by the parties the Commissioner (S. Kartar Singh) found issue No. 1 in favour of the petitioner. Under issue No. 2 he held that although the petitioner was drawing Rs. 35 per mensem only yet the provisions of section 12 of the Minimum Wages Act applied to this case and he was, therefore, entitled to compensation on the basis of Rs. 60 per mensem and consequently the petitioner was entitled to a sum of Rs. 1,512 as compensation.

The appellant (Tilak Raj Suri) felt aggrieved against that order and came to this Court in appeal which came up before me on the 24th of August, 1961, when issue No. 2 was split up in three separate issues, namely (1) what remuneration Des Raj was drawing at the time this accident took place, (2) whether the provisions of the Minimum Wages Act applied to this case, and (3) if the answer to issue No. 2 is in the affirmative, to what amount of compensation would Des Raj be entitled and the case was remanded to the trial Court for its findings thereon.

Under issue No. (1), after remand, the Commissioner found that the petitioner at that time was drawing Rs. 35 per mensem. Under issue No. (2) it was held that the provisions of Minimum Wages Act did apply and the Minimum Wages would be at the rate of Rs. 60 per mensem by virtue of section 12 of the Act. The Commissioner then found that the petitioner was entitled to compensation of Rs. 1,512. The case again came up before me for

Chopra Printing  
Press  
v.  
Des Raj  

---

Bedi, J.

arguments. The counsel for the appellant drew my attention to the provisions of section 4(b) of the Workmen's Compensation Act and stated that the words used in this section 'has been in receipt of monthly wages' show that the compensation will have to be paid to the respondent on the basis of the wages which he actually received every month. The counsel for the respondent on the other hand submitted that admittedly the provisions of Minimum Wages Act did apply to this case,—*vide* notification No. 1704-S-Lab-57/3275-A, dated 28th February, 1957 and by virtue of this the wages which the respondent would be deemed to be getting would be Rs. 60 per mensem. In this connection he drew my attention to section 5 of the Workmen's Compensation Act which relates to the method of calculating the wages. It lays down that in this Act and for the purposes thereof the expression 'monthly wages' means the amount of wages deemed to be payable for a month's service. He also drew my attention to section 25 of the Minimum Wages Act which says that any contract or agreement whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

It is obvious, therefore, that even if a person tries to contract out of the provisions of this Act, he cannot do so by virtue of the provisions of section 25 of the Minimum Wages Act. It is true that at the time of this accident the respondent was actually drawing Rs. 35 per mensem but reading sections 4 and 5 of the Workmen's Compensation Act along with section 25 of the Minimum Wages Act and the notification mentioned above

leave no room for doubt whatsoever that the respondent would be deemed to be getting Rs. 60 per mensem at the relevant time. As such the compensation allowed to the respondent (Des Raj) was correctly estimated. The appeal, therefore, stands dismissed with costs.

Chopra Printing  
Press  
v.  
Des Raj  
—  
Bedi, J.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J., and Harbans Singh, J.

CHANAN SINGH,—Appellant.

versus

REGIONAL DIRECTOR EMPLOYEES' STATE  
INSURANCE CORPORATION,—Respondents.

First Appeal Order No. 17 of 1961.

1962

*Employees' State Insurance Act (XXXIV of 1948)—S. 96—Rules framed under, by the Punjab State Government—Rule 17—Whether intra vires—S. 2(12)—factory—Principal Employer and Accountant—Whether to be included in the twenty persons—Part-time employee—Whether to be counted as one person—Electric Supply Company—Administrative staff and line staff—Whether to be counted amongst the twenty persons.*

December 14th.

*Held*, that the fixing of a period of limitation is a procedural matter and the Punjab State Government was within its powers under section 96(I)(b) of the Employees' State Insurance Act, 1948 in framing rule 17 which is not inconsistent with any provision in the Act. This rule by which the State Government fixed the period of one year as the period of limitation for an application under section 75 of the Act is *intra vires*.

*Held*, that whether the principal employer is to be included in the twenty persons necessary to make premises a factory within the meaning of section 2(12) of the Act or not must depend on the facts of each particular case, and where, as must be the case in many small businesses which