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IN THE HIGH COURT OF DELHI

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FAO No.329/2004

M/s. National Horticultural Research and
Development Foundation Appellant
through: Mr.Harvinder Singh with
Ms.Deepti Singh Sodhi, Advs.

VERSUS

Commissioner, Workmen
Compensation & Anr. Respondents
through: Mr.Narain Bhatia for respondent No.2.

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DATE OF DECISION:
25.4.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**(Oral)

1. Heard learned counsel for the parties.
2. The substantial questions of law which arise for consideration in the instant appeal are three fold. Firstly, whether without examining the doctor who issued the medical certificate relied upon by the Commissioner, Workmen's Compensation, could contents thereof be used in favour of the workman? Secondly, whether the Commissioner, Workmen's Compensation has drawn correct conclusions from the medical certificate relied

upon by the workman? Lastly whether while computing the loss of wages, the Commissioner Workmen's Compensation was bound to take into consideration that being in service of the appellant the workman served with full wages till he retired?

3. Before proceeding ahead it may be noted that the disability certificate in question has not been formally exhibited as a document. It exists at page 24 of the record of the learned Commissioner, Workmen's Compensation.

4. Being a first appeal it would not be out of place to record that it would be impermissible for this Court to re-appreciate evidence and set aside a conclusion of fact arrived at by the Commissioner, Workmen's Compensation merely because another view is possible on the same evidence. Further, if it is found that material evidence has been ignored by the Commissioner, Workmen's Compensation or a material circumstance has been ignored, corrective action can always be taken for the reason a Court or a Tribunal of original jurisdiction where omits to consider a piece of relevant evidence or fails to note a material circumstance while appraising evidence, it acts in violation of the jurisdiction vested in it and such a decision would be required to be corrected.

5. The facts necessary to be noted are that the Workman, Mahender Singh, laid a claim before the Commissioner,

Workmen's Compensation alleging that while on duty at the night shift in the intervening night of 5th June, 1995 and 6th June, 1995 his left leg got stuck in mud which got soggy due to heavy rains. He stated that as a result thereof he suffered injury in the left leg which permanently disabled him. He stated that he was employed as a watchman. To prove the injury and the extent of disability he produced no document when he filed the claim petition before the Commissioner, Workmen's Compensation. The Commissioner, Workmen's Compensation directed him to report at a Government hospital and obtain a disability certificate. The workman claims that he reported to the doctors at Lok Nayak Jai Prakash Narain Hospital who gave him the medical certificate dated 5.10.1999 certifying as under:-

“This is to certify that patient Sh. Mahender Age 45 years S/o Shamsher vide OPD No.42942 whose specimen signature is given below is suffering from Paraparesis (both lower limbs). His disability is more than forty (in Percentage %) (Permanent/Temp.). It is therefore recommended/advised that he/she may be given all benefits as per the govt. rules.’

6. The medical certificate, the circumstances under which it was obtained and a slip issued by the X-Ray department of Lok Nayak Jai Prakash Narain Hospital became a bone of controversy before the Commissioner, Workmen's Compensation. The slip issued by the X-Ray Department, proved as Ex.A-1, records that

the date of issue thereof as 24.9.1990. At the rear of the slip, the date noted is 25.9. followed by the year not written with clarity. The year has been recorded in a manner where the numeral 1990 can also be read as 1999.

7. The stand of the management was that the workman had a disability of the left leg since long, in fact since the date of his employment, and the same was being misused to allege that it had been incurred during employment.

8. To bring home the point, the management urged that the slip Ex.A-1 issued by the X-Ray department of Lok Nayak Jai Prakash Narain Hospital evidenced that the left leg of the workman was X-rayed on 24.9.1990.

9. The workman urged that it was a case of erroneous recording of a date. The workman alleged that the date 24.9.1990 was in fact 24.9.1999.

10. The Commissioner, Workmen's Compensation has held in favour of the workman, recording that since the workman had gone to the hospital as directed by the Commissioner, Workmen's Compensation and in respect whereof a referral letter was issued by the Commissioner, Workmen Compensation on 24.8.1999, the date on the X-Ray slip Ex.A-1 had to be 24.9.1999.

11. With reference to the disability certificate, the Commissioner, Workmen's Compensation has noted that the

same records more than 40% disability and on this basis compensation has been assessed holding that the evidence establishes that the workman suffered the injury while on duty.

12. Pertaining to the first two questions of law (noted in para 2 above), it is urged by learned counsel for the appellant that the Commissioner, Workmen's Compensation has completely misread Ex.A-1. Two fold submissions have been urged in relation thereto. It is firstly urged that the date of the document is clearly recorded as 24.9.1990 on the front side of the slip. That the date at the rear recorded as 25.9.1990 cannot be read as 25.9.1999. It is urged that the same has to be considered in light of the date recorded on the front of the slip. The second submission made is that assuming the X-Ray slip is dated 24.9.1999, the contents thereof have been ignored for the reason the slip records that X-Ray of the left leg is being taken with reference to an old injury. Elaborating on this aspect, learned counsel for the appellant draws attention of this Court to the cross-examination of the workman wherein, in cross-examination, the workman admitted that he went to Lok Nayak Jai Prakash Narain hospital on 24.9.1990.

13. Per contra, learned counsel for the workman urges that the hiatus in the dates recorded on Ex.A-1, on the front and the rear, cannot be resolved as urged by learned counsel for the

appellant. Counsel urges that the circumstances under which appellant went to the hospital to obtain the certificate, and as noted by the Commissioner, Workmen's Compensation, have to be kept in mind. Counsel urges that evidence has to be probablized with reference to the circumstances under which the workman was constrained to go to the hospital and obtain a medical certificate. With respect to the testimony of the workman in cross examination, counsel urged that once again the date 24.9.1999 has been wrongly noted in the testimony as 24.9.1990.

14. A perusal of Ex.A-1 shows that on the front side of the document the date 24.9.1990 is written with clarity. At the rear, the date can be read as 25.9.1990 as well as 25.9.1999.

15. To err is to human. Unfortunately, since no witness was examined from Lok Nayak Jai Prakash Narain Hospital with reference to the record maintained by the hospital, it would be difficult to opine conclusively one way or the other if I probablize the date of the X-ray slip Ex.A-1 as per the rival versions noted above. However, there are circumstances to hold in favour of the workman. The same is the age of the workman recorded on Ex.A-1. It records the age as 45 years.

16. In the year 1990 the workman was not aged 45 years. This was his age in the year 1999. I thus hold that the evidence

probablizes that the X-ray slip Ex.A-1 was issued on 24.9.1999. The conclusion drawn by the Commissioner, Workmen's Compensation is therefore correct.

17. However, whether the Commissioner, Workmen's Compensation has drawn the correct conclusions from the documents is the question which needs to be answered further.

18. As noted hereinabove, the X-Ray slip further records that the injury was old. How old? Nothing has been recorded.

19. As noted above, the workman suffered the injury on the intervening night of 5th and 6th June, 1995. Thus as of 1999 one could well record that the injury was old. Nothing therefore turns on the noting at the rear of Ex.A-1 that it pertains to an old injury.

20. The disability certificate records and certifies as under:-

"This is to certify that patient Sh. Mahender Age 45 years S/o Shamsheer vide OPD No.42942 whose specimen signature is given below is suffering from Paraparesis (both lower limbs). His disability is more than forty (in Percentage %) (Permanent/Temp.). It is therefore recommended/advised that he/she may be given all benefits as per the govt. rules.'

21. From the language of the certificate the Commissioner Workmen's Compensation has concluded that the workman suffered a disability due to the injury sustained by him while on

duty.

22. Learned counsel for the appellant has shown medical jurisprudence to this Court to the effect that paraparesis is a condition caused by a virus that results in immune dysfunction.

23. It is urged by learned counsel for the appellant that the Commissioner Workmen's Compensation has ignored material circumstances, namely the language of the disability certificate and has ignored medical jurisprudence, for the reason the certified disability as per medical jurisprudence is caused by virus and is a result of immune dysfunction. Counsel urges that the finding pertaining to the disability attributable to the injury sustained during employment is thus vitiated.

24. It appears to be a case, where before the Commissioner Workmen's Compensation this aspect of the matter was not highlighted and hence not considered.

25. As held by the Division Bench of the Calcutta High Court in the decision reported as 1983 Lab. I.C. 1285 Bengal Coal Co.Ltd. Girimint Vs. Sew Pujan Harijan the contents of a disability certificate require to be proved by a doctor in relation to his opinion. I may add, that as in the instant case, the cross-examination of the doctor may become necessary to elicit whether injury was on account of a virus which resulted in immune dysfunction or was solely attributable to the fracture of a

bone of the left leg. I may highlight at this stage that the medical certificate records dysfunction of both lower limbs. It is not the case of the workman that while on duty he suffered injury of both lower limbs.

26. The matter needs further evidence.

27. I note that the Commissioner Workmen's Compensation has not dealt with the defence that the workman suffered no loss of wages on account of the disablement inasmuch as he was retained in employment on full wages. As per Section 4(1)(c) of the Workmen's Compensation Act while computing compensation the impact of the disablement on the earning capacity has to be considered and as per Explanation-II to said section while assessing the loss of earning capacity for the purposes of computing compensation payable due regard has to be given to the percentage loss of earning capacity in relation to the different injuries specified in Schedule-I to the Act. Thus, it was obligatory on the Commissioner Workmen's Compensation to further consider the matter and deal with the plea of the employer that the workman suffered no pecuniary loss due to the injury for the reason he was retained in employment with full wages.

28. The appeal accordingly stands disposed of quashing the impugned order dated 23.8.2004 passed by the

Commissioner Workmen's Compensation. The claim petition filed by the workman is restored. The Commissioner Workmen's Compensation would examine the doctor who has issued the medical certificate. The opinion of the doctor would be elicited with respect to the cause of the physical handicap suffered by the workman. Fresh decision would be taken on the injury with reference to the said evidence. The Commissioner Workmen's Compensation would also deal with the defence that the workman suffered no loss of wages due to the disablement suffered by him.

29. Before concluding I may note that the issue of Mahender Singh being a workman under the appellant and his being on duty on the intervening night of 5th June 1995 and 6th June 1995 and his being injured while on duty would not be re-decided as said findings have not been set aside by me. It would be treated that the workman was no duty on the night of 5th June 1995 and 6th June 1995 and suffered the injury as claimed by him.

30. Commissioner Workmen's Compensation would re-decide the issue within 4 months of date of receipt of the present order.

31. Parties are directed to appear before the Commissioner Workmen's Compensation on 19.5.2008.

32. TCR be returned through special messenger forthwith.

33. The amount deposited by the appellant pursuant to the impugned order with the Commissioner Workmen's Compensation would be returned to the appellant with accrued interest if any.

34. Copy of this order be supplied dasti to learned counsel for the parties.

35. No costs.

April 25, 2008
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PRADEEP NANDRAJOG, J.