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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C.) No. 10289/2009 & CM No. 10514/2009

Judgment Reserved on: 21.10.2009

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Judgment Delivered on: 27.10.2009

SHRI RAKESH MAHENDRU

..... Petitioner

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Through: Mr. Rajneesh Sharma, Advocate.

Versus

\$ LABOUR COMMISSIONER (WEST) AND OTHERS

....Respondents

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Through: Mr. Rajeev Sharma, Advocate for
respondent No. 1, Ms. Harsh Lata for
respondent no. 2 and Ms. Pratima
Chaudhary for respondent no.3.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J

The respondent no. 3 is the widow of late workman Triloki Yadav who died in an accident on 28.01.2007 in the course of his employment while he was employed with the petitioner Shri Rakesh Mahendru.

2. The Commissioner, Workmen's Compensation, under the Workmen's Compensation Act, 1923, vide order dated 23.01.2008 passed an award of compensation in favour of respondent no. 3 and thereby awarded her a sum of Rs.3,32,580/- and Rs.2500/- towards funeral expenses. The compensation awarded by the Commissioner, Workmen's Compensation, was deposited by the Insurance Company (respondent no. 2 herein) on 29.01.2008 and the same was disbursed amongst the legal

heirs of the deceased workman vide order of Commissioner, Workmen's Compensation, dated 11.02.2008. Thereafter, on 12.03.2008, the widow of deceased workman (respondent no. 3) had moved an application under Section 4-A readwith Section 22(A) of the Workmen's Compensation Act, 1923 for award of interest and penalty because of default on the part of the employer in depositing the compensation amount within one month of the date of the accident. The Commissioner, Workmen's Compensation, (respondent no. 1) disposed of the said application of respondent no. 3 vide his order dated 28.04.2009 and awarded interest @ 12% per annum on the compensation amount of Rs.3,32,580/- for the period of delay, i.e., for the period from 27.02.2007 till the date of deposit of compensation amount on 29.01.2008 which was quantified at Rs.36,584/-. The respondent no. 1 also awarded penalty against the petitioner @ 50% of the principal amount which was quantified at Rs.1,66,290/-. The interest awarded vide order dated 28.04.2009 was ordered to be paid by the Insurance Company (respondent no. 2) and the penalty amount was ordered to be paid by the employer (petitioner herein). It is aggrieved by this order of the Commissioner, Workmen's Compensation, that the petitioner has filed the present writ petition seeking setting aside of the award of penalty and interest inter alia on the ground that since the amount of compensation adjudicated by the Commissioner, Workmen's Compensation, vide order dated 23.01.2008 was promptly deposited by the Insurance Company within five days of the adjudication on 29.01.2008, the interest and penalty under Section 4-A readwith Section 22 of the Workmen's Compensation Act, 1923 could not have been awarded by the Commissioner.

3. The operation of the impugned award was stayed by this Court vide

its order dated 22.07.2009 and notice was ordered to be sent to the respondents. In response to the notice of this writ petition, an application for vacation of the interim ex parte stay order dated 22.07.2009 being CM No. 10154/2009 has been filed by respondent no. 3. In the course of hearing on this application of respondent no. 3, counsel for both the parties had agreed that the writ petition may be heard and disposed of finally at this stage itself. I, therefore, heard the counsel for both the parties in the matter.

4. Ms. Pratima Chaudhary, learned counsel appearing on behalf of respondent no. 3 had raised a preliminary objection to the maintainability of the present writ petition. It was contended by her that since a statutory remedy of appeal against the impugned order is provided in Section 30 of the Workmen's Compensation Act, 1923, the petitioner could not have filed the present writ petition by-passing the statutory remedy which mandates him to deposit the impugned award amount as a condition precedent for filing of the appeal.

5. Ms. Pratima Chaudhary had relied upon a Division Bench judgment of this Court in ***Smt. Phuli Devi Versus Shri Jawahar Singh and Others, [LPA No. 54/2009, Decided on 17.03.2009]*** in support of her argument against the maintainability of the present writ petition. Mr. Rajneesh Sharma, counsel appearing on behalf of the petitioner had no answer to the objection against the maintainability urged on behalf of respondent no. 3. The learned counsel appearing on behalf of the petitioner had simply contended that the writ Court has ample powers and can entertain a writ petition even if statutory remedy of appeal is not availed by the petitioner.

6. I have given my anxious consideration to the above rival arguments advanced by counsel for the parties on the maintainability of the present

writ petition but on giving my thoughtful consideration to the same, I have not been able to persuade myself to agree with the submissions made on behalf of the petitioner. It was not disputed by counsel appearing on behalf of the petitioner that there was a statutory remedy of appeal available to the petitioner against the order of the Commissioner, Workmen's Compensation, impugned in the present writ petition. Section 30 of the Workmen's Compensation Act, 1923 is relevant and is extracted below :-

“30. Appeals -- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely :-

- (a) an order as awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (aa) an order awarding interest or penalty under Section 4 A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or
- (e) an order refusing to register a memorandum of agreement registering the same or providing for the registration of the same subject to conditions :

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees :

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this Section shall be sixty days.

(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this Section."

7. A plain reading of the above statutory provisions makes it abundantly clear that the order of the Commissioner awarding penalty and interest could have been challenged by the petitioner only by way of appeal in case the challenge against the said order involved a substantial question of law. The petitioner was also required to deposit the impugned award amount of interest and penalty as a condition precedent for filing of the appeal. It seems that the petitioner has filed the present writ petition in complete disregard of the statutory provisions for appeal contained in Section 30 of the Workmen's Compensation Act, 1923 to avoid its liability to deposit the impugned award amount as provided in Section 30 of the Act. A Division Bench of this Court in Smt. Phuli Devi's Case (supra) has observed as under :-

"Lastly, we feel that the writ petitions should not have been entertained in view of the statutory appeal provided under Section 30 of the Act. (see **Rainbow Industries Versus Regional Director, E.S.I. Corporation**, reported in (2001) 4 BOMLR 298, **Executive Engineer Versus R.C.P. Rukman**, reported in 1979 ACJ 73, **M/s. Chowgule & Co. Pvt. Ltd. Versus Commissioner of Workmen's Compensation**, 1970 Lab. I.C. 502 (Vol. 3 C.N. 119))

and **K.L. Rathee Versus Municipal Corporation of Delhi** reported in AIR 1995 Delhi 226. The said appeal can be filed on substantial question of law and cannot be entertained unless the memorandum of appeal is accompanied by the certificate issued by the Commissioner to the effect that the appellant has deposited the amount payable under the order appealed against. We do not think writ petitions should have been entertained when statutory right to appeal has been provided but restricted to only substantial question of law and that to on the condition that the appellant should have deposited the compensation awarded by the Commissioner. Lastly, appeal has to be filed within a period of six days.”

8. This Court is bound by the decision of the Division Bench referred above. Since an equally efficacious alternative remedy of statutory appeal against the impugned order is available to the petitioner, the present writ petition is not maintainable and is liable to be dismissed on this ground.

9. In view of the foregoing, this writ petition is dismissed as not maintainable. CM No. 10154/2009 filed by respondent no. 3 for vacation of ex parte stay is allowed. The stay order dated 22.07.2009 is vacated. The parties are left to bear their own costs.

October 27, 2009
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S.N.AGGARWAL
[JUDGE]