

* HIGH COURT OF DELHI : NEW DELHI

FAO. No.267/2008

% Judgment reserved on: 3rd December, 2009

Judgment delivered on: 17th December, 2009

Management of Best Roadways Ltd.,
Mahipal Pur Industrial Complex,
Between IAI Red Light
Mahipalpur, Delhi

....Appellant

Through: Mr. Javed Ahmed with Mr. Vaseem,
Adv.

Versus

1. Smt. Darshna Devi
W/o. late Kamal Nain Sharma

2. Pooja Devi
D/o. late Kamal Nain Sharma

3. Miss Arti
D/o. late Kamal Nain Sharma

4. Dinesh Sharma
S/o. late Kamal Nain Sharma

5. Bindu Sharma
s/o. late Kamal Nain Sharma

All R/o. Village & Post Basantpur
Tehsil and Distt. Kathua, J&K

...Respondents.

Through: Ms. Pratima Chaudhary, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Appellant in this appeal, is assailing the legality and validity of order dated 29th May, 2008 passed by Commissioner of Workmens' Compensation (for short as 'Commissioner').

2. By impugned order, the Commissioner allowed the claim of the respondents, filed under Section 22 of Workmens' Compensation Act, 1923 (for short as 'Act') and awarded compensation amounting to Rs.3,38,880/-.

3. Respondents in their claim petition, stated that Kamal Nain Sharma (since deceased) received injuries in an accident arising out of and during the course of employment, on 20th August, 2003. On that day, deceased was on duty as usual and was loading the packages in the vehicle on instructions and directions of appellant for their trade and business. When the work of loading of packages in the vehicles was in full swing, suddenly the deceased fell down from the vehicle. As a result of it, deceased sustained grievous injuries all over his body and the impact was much in his head. He was immediately rushed to Deepan Hospital by appellant's staff. Deepan Hospital referred him to Indian Spinal Injuries Centre, Vasant Kunj, where he was provided some treatment. Thereafter, the management got him discharged from the hospital and sent him to his native village in an ambulance providing him oxygen but on the way he expired on 26th August, 2003.

4. In the written statement, it is stated by appellant that workman Sh. Kamal Nain Sharma had never been employed with the appellant at any point of time. Nor he ever sustained injuries during the course of his working under the

management and control of appellant. Since deceased had never been employed with appellant, the question of paying any compensation to claimants does not arise.

5. It is contended by learned counsel for appellant that the deceased did not fall within the definition of 'Workman' as per Section 2(1)(n) of the Act, since deceased did not perform the duties connected with appellant's trade or business. As per medical records, it has been shown that deceased has fallen from his own bike.

6. Other contention is that as per evidence, deceased was employed by one Pawan Chaudhary and he used to work for Pawan Chaudhary and this Pawan Chaudhary was neither the employee, agent or authorized person of appellant.

7. Lastly, it is contended that in the application for compensation, it has been averred by respondents that after accident deceased was taken to Rajiv Gandhi Hospital. However, during the course of evidence it was revealed that deceased has not been admitted to Rajiv Gandhi Hospital. To overcome this hurdle, respondents amended their claim petition and came up with averments that deceased was taken to Deepan Hospital. Thus, there are contradictions in the claim of respondents.

8. On the other hand, it is contended by learned counsel for respondents that, deceased was an employee of appellant and was working under the management of appellant. While loading, he fell from the truck and received sustained injuries.

9. Another contention is that the deceased was taken by management people to hospital and was got admitted in hospital, in which appellant's address has been

mentioned. Thus, there is no infirmity in the impugned order passed by the Commissioner.

10. Short questions which arise for consideration are as to whether deceased was a 'Workman' employed by appellant and whether during the course of employment, he sustained injuries in the accident.

11. There is no documentary evidence on record to show that the deceased was employed with appellant. There is only oral evidence on behalf of respondents, as respondent, in her evidence has stated that, deceased-her husband, was employed by appellant management, as a labourer. On 20th August, 2003 he received injuries in accident out of and during the course of employment. She also stated in her evidence that after the accident, deceased was removed to a local hospital. When he could not get any relief he was immediately taken to Rajiv Gandhi Hospital, Delhi by the management. During treatment in Rajiv Gandhi Hospital, a sum of Rs.35,000/- towards medical expenses, was paid by the management.

12. In cross-examination, it was nowhere suggested to her, that deceased was never removed to the hospital by the management. It was also nowhere suggested that, during treatment in Rajiv Gandhi Hospital, sum of Rs.35,000/- towards medical expenses, were not paid by the management.

13. On the other hand, appellant's witness Sh. Charanjit Singh, the Administrative Officer in his evidence has stated that Kamal Nain Sharma had never been employed with the appellant at any point of time. There was never any relationship of employer and employee between the appellant and deceased.

Deceased, never sustained injuries during the course of employment or working under the management and control of the appellant.

14. This witness in entire evidence, nowhere stated that management of the appellant never got admitted the deceased in any hospital or paid his medical expenses.

15. In the present case, oral evidence on behalf of both parties is at equal footing. When oral evidence on behalf of both the parties is at equal footing, then, under those circumstances, the court has to rely upon some other corroborative evidence, if available.

16. The other evidence available in the present case is the documentary evidence. It is well-settled that persons can tell lie but documents do not. Documents Exb.AW3/1 and Exb.AW3/5 demolishes the entire defence of appellant. Exb.AW3/1 is the admission sheet of Indian Spine Injuries Centre. According to this document, Kamal Sharma was admitted in the I.C.U Ward on 22nd August, 2003. Mailing address mentioned in the admission sheet reads as under;

“Best Roadways Ltd., Khasra No.716-717, Mahipalpur,
Nangal Diary Road.”

17. The other document is Exb. AW3/5, which is, ‘In-patient Bill’. This bill is in respect of Kamal Sharma. As per this bill, the patient was admitted on 22nd August, 2003 and was discharged on 25th August, 2003. This bill is for Rs.39,652.36p. According to this bill, a sum of Rs.35,000/- has been shown as

“deposit”. Address mentioned on this bill is that of the appellant, which reads as under;

“BEST ROADWAYS LTD., KHASRA NO.716/717,
NEW DELHI”.

18. Mentioning of appellant’s address on documents Exb.AW3/1 and Exb.AW3/5 conclusively goes on to show that it was the appellant who had got admitted Kamal Sharma (since deceased) in the hospital. Moreover, as per statement given by wife of the deceased, during treatment a sum of Rs.35,000/- was paid towards medical expenses by the appellant stands corroborated with “deposit” mentioned made in Exb.AW3/5.

19. Though, as per discharge summary Exb.AW3/2, at the time of admission, the alleged history has been mentioned as;

“fall from his own bike.”

20. However, there is no evidence to this effect on record. It is nowhere stated as to who has got this alleged history recorded in the discharge summary.

21. In view of the documents Exbs.AW3/1 and AW3/5, it stands conclusively established that the deceased was got admitted in the hospital by the appellant. Appellant also paid substantial amount towards the treatment of deceased. Had deceased not been the employee of the appellant-Company, there would have been no occasion for appellant to have paid substantial medical expenses, amounting to Rs.35,000/-.

22. In **Maghar Singh Vs. Jashwant Singh (1997 ACJ 517)**, Supreme Court observed;

“There is also the evidence showing the respondent having taken the appellant to the hospital after he sustained the injuries which is a factor which could not have been overlooked. There is also no reason to believe that the appellant would wrongly point a finger at the respondent as his employer.

23. In view of above discussion and as per evidence available on record, no infirmity or illegality can be found in the impugned order passed by the Commissioner.

24. Present appeal is thus not maintainable and same is hereby dismissed.

25. On 17th November, 2009, this Court directed that 50% of the amount lying deposited with the Commissioner be paid to the claimants, subject to furnishing of adequate security to the satisfaction of the Commissioner. Since the appeal of the appellant has been dismissed, entire amount lying deposited with the Commissioner, be paid to the claimants, only after expiry of the period of appeal.

26. Parties shall bear their own costs.

27. Record of Commissioner be sent back.

17th December, 2009
RB

V.B. GUPTA, J.