

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 158/2007**

Decided on 27.10.2010

GENERAL MANAGER NORTHERN RAILWAY & ANR

..... Appellants

Through: Mr.Amit Dubey, Adv.

versus

ASHOK KUMAR YADAV

..... Respondent

Through: Mr. H.S. Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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 |

: MOOL CHAND GARG, J(Oral)

1. By this appeal learned counsel for the appellant assails the order dated 05.02.2007 passed by the Commissioner under Workmen's Compensation Act awarding compensation to the respondent Sh Ashok kumar to the tune of Rs 2,19,270/- on account of injuries sustained by him during the course of his employment with the appellants and further a simple interest @ 12% P.A on the amount of compensation as the compensation amount was not paid within one month of the date on which compensation became due.

2. The brief factual matrix of the case is that the respondent Sh. Ashok Kumar Yadav S/o Sh. Jai Dayal was employed with the appellant No 2 as a Crane Khalasi in control Room at New Delhi Railway Station. The respondent on 21.02.1998 while coming to New Delhi from Ghaziabad by EMU train No. GDN-1 to his duty which was to commence from 12.00 clock midnight to 8.00 clock in the morning, slipped from the platform and fell down on the track and met with an accident with a power engine which was going from New Delhi

Railway station to Nizamudin Railway Station. Thereafter respondent was admitted to Central Hospital, Northern Railway where his three fingers and thumb of the left hand had to be amputated as was badly crushed by the Power Engine, apart from this, respondent had also suffered head and other injuries all over his body. The appellants on the other hand despite being aware of the accident since the day of its occurrence and a notice been served upon them under section 10 of the Workmen Compensations Act by the respondent has yet not paid any compensation. At the time of the accident, respondent was aged about 37 years and was drawing salary @ 3170/- P.M. Thereafter, the compensation petition was filed by the respondent wherein he prayed for the payment of compensation amounting to Rs 2,34,270.06 p, along with interest penalty and the cost of the application.

3. The claim of the respondent was contested by the appellants by filing written statement wherein they have taken preliminary objections as to the maintainability of the claim petition primarily on the ground that (1) the respondent Sh Ashok Kumar was not entitled to compensation under the Act, as the respondent had met with an accident before reaching the place of work and as such his accident could not be termed as accident arising out of and in the course of his employment with the appellants. (ii) It was also submitted by the appellants that on being declared fit for duty by DMO-GBS respondent resumed duty and submitted the Accident form (WCA-4) along with the statement of eye witness duly signed by Railway doctor and the same were forwarded to DPO/P-1 (Personal branch) for arranging necessary compensation/ relief vide letter dated 16.06.1998 but the same were returned by P-14 section for completion of column No 7 and re-submission of the same to P-14 Section for further action but he did not return these forms till date.

4. On pleadings of the parties, the Commissioner framed the following issues:-

- (i) Whether the accident did not occur during and in the course of the employment of the respondent?

- (ii) To what amount of compensation if any is the workman entitled?
- (iii) Relief?

5. The Commissioner while dealing with Issue No 1 observed that:

“The respondent has mentioned in the claim that he was going to attend to his duty at the control office which is very near to the New Delhi Railway Station and the respondent witness also have admitted that fact. The accident occurred 15 minutes before starting of the duty of the respondent

The respondent in his written statement has admitted that the respondent met with the accident while coming to join his duties. It is also admitted that compensation claim was forwarded to the concerned authorities which was received back for completion of column 7 of the form.

It is evident from the facts and the circumstances of the case that the respondent reached at New Delhi Railway station to join his duties in Control office but he met with the accident before 15 minutes of starting of his duty at 0 hour to 8/- hrs. on 21.02.1998 (considering both points of the time as well as the place of accident and the distance of the control office from New Delhi Railway Station). I am of the considered opinion that the theory of notional extension of the employers premises must be applied to this case. Therefore, I have no hesitation to hold that the accident of the petitioner occurred during and in the course of his employment with the respondent and therefore the issue is decided in affirmative.”

6. In this regard reference has also been made to a judgment of Hon’ble High Court of Calcutta in the matter of Commissioner for the port of Calcutta V/s Kaniz Fatema (AIR—1961-CAL-310(1960) to LJ-344 wherein it has been observed that:

“what is required for an accident to come within the theory of notional extension is that the place of accident must be one at which workman cannot be present except by the virtue of his employment.

7. Regarding Issue No 2 it has been observed by the Commissioner that

“The petitioner workman had stated in the claim application as well as in the affidavit that his last drawn wages was Rs 3170/- P.M and he had completed 37 years of age at the time of accident.. The same is no were disputed . The respondent was referred by this court to

Ram Manohar Lal Hospital New Delhi for assessment of loss of earning capacity vide order CWC/NDD/18/200/1316 dated 07.12.2004 and the said hospital, forwarded disability certificate vide their letter dated 28.01.2005 which shows that the respondent has been examined by the medical Board and on examination his disability has been assessed 60% permanent in view of the above, as per the provisions of the act, the compensation payable to the respondent is computed as under

(i) The age of the claimant being 37 years .

The Relevant factor laid down in schedule iv of the Act 192.14

(ii) The permanent disability resulted from the injury 60%

(iii) 60% of the monthly wages drawn by the respondent at the time of the accident Rs 1902/-

(iv) Amount of compensation as per the 192.14*1902*60/100 provisions of clause (b) of sub section (1)

Rs 2,19,270.16 p

Of section 4 of the Act or say 2,19,270/

In view of the above I hold that the respondent is entitled to receive compensation amounting to Rs 2,19,270/- (Rupees two lakhs nineteen thousand two hundred and seventy only on account of injuries sustained by him during the course of employment with the appellants.”

8. As per issues No 3 , the Commissioner had further observed that

As per the provisions of the ACT. The amount of compensation is payable to the workman within one month of the date on which compensation becomes due. In this case the accident has taken place on 20.02.1998 and the amount of compensation would have been paid to the respondent by 10.03.1998. But the same has yet not been paid to him . Therefore as per the provisions of clause (a) of sub-section (3) of section 4A of the Act, the respondent is also entitled to receive simple interest @ 12% P.A on the amount of compensation of Rs 2,19,270(Rupees two lakhs nineteen thousand two hundred and seventy) on w.e.f 20.02.1998 till its realization

9. Appellants have also taken a plea that the respondent had not completed the column No 7 of the Accident Form, hence disbursement of compensation amount was taking time which in my view is a frivolous ground for not discharging responsibility in as

much as such minor formalities cannot be a ground for non- payment of compensation amount.

10. Having gone through the above observations, I am of considered view that the order of the Workmen Commissioner dated 05.02.2007 is a reasoned order in as much as it is evident from the facts and the circumstances of the case that the respondent reached at New Delhi Railway station to join his duties in Control office but he met with the accident before 15 minutes of starting of his duty on 21.02.1998. Also after considering both point of the time as well as the place of accident and the distance of the control office from New Delhi Railway station it is clear that the case of the respondent falls within the theory of notional extension of the place of employment. Hence it must be presumed to be on duty right from the time he left his house.

11. Therefore I do not find any reason to interfere with the order of the workmen Commissioner. Hence the appeal is dismissed with no orders as to costs.

C.M.6615/2008

The application is allowed. The amount of compensation deposited in this Court in the form of FDR be released to the respondent along with interest accrued on the same.

MOOL CHAND GARG,J

OCTOBER 27, 2010/'sg'