

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

+ **FAO No. 74/2008**

% **10th March, 2014**

PATEL ROADWAYS LTD. Appellant

Through: **Mr. M.Y.Khan, Adv.**

VERSUS

KALLO & ANR. Respondents

Through: **Mr. Sanjeev Mehta, Adv. for R-1.**

**Mr. Amit Gaur, Adv. for Mr. Pradeep
Gaur, Adv. for R-2.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 by the employer impugning the judgment of the Commissioner dated 19.11.2007 which has allowed the claim petition filed by the respondents/claimants, the dependents of the deceased Satya Pal.

2. The facts as pleaded before the Commissioner were that the deceased Sh. Satya Pal was working with the appellant i.e M/s Patel Roadways Limited at Chkamberpur at UP Border as a loading and unloading labourer

at a salary of Rs.1500/- per month. In the last week of March, 1993 there was a fire due to the explosion of some inflammable acid causing severe burn injuries to the deceased Satya Pal. The body of the deceased Satya Pal was handed over to the relatives/friends of the deceased by the hospital authorities. The deceased was said to be 23 years at the time of his death. It was pleaded that the deceased employee Sh. Satya Pal died in an accident arising out of and in the course of employment and a notice under Section 10 of the Act dated 27.1.1994 was sent, which failed to yield any result and therefore the subject claim petition was filed.

3. I may note that originally the widow and the father of the deceased Satya Pal namely Smt. Shrishta and Sh. Nathu Ram were claimants no.1 and 2 before the Commissioner but their names were deleted during the pendency of proceedings before the Commissioner. Insurance company, and which is the respondent no.2 herein was also a respondent before the Commissioner.

4. The appellant herein was an employer and had filed its written statement as the respondent no.1 in the case. In the written statement relationship of employer and employee was denied. It was admitted that there was a fire in the godown, but it was pleaded that help to the deceased

Satya Pal was only a normal humanitarian conduct. It was pleaded that since the deceased was not an employee of the appellant, it was not liable to pay compensation under the Act. In the written statement there was also a plea raised of lack of territorial jurisdiction.

5. The Commissioner by the impugned order while allowing the claim petition has given the following reasoning in para-12 of the order:-

“12. On the basis of record available in the file, evidence adduced by the parties, I decide the issues framed by my learned predecessor on 27-2-06 as under:-

Issue No.1 and 2

I find from the record that the petitioners filed an application on 3.3.94 stating that Sh. Satya Pal was working with M/s Patel Roadways in its Godown at Chikambarpur, U.P. Border and was getting Rs.1500/- per month and stating that in the month of March 1993, the deceased Sh. Satya Pal got burn injuries but the chemical fire and he was admitted in a Hospital where he succumbed to his injuries. The respondent, M/s Patel Roadways filed its written statement on 15-10-97 and denied all the allegations leveled against the respondent and requested the court to dismiss the claim petition filed by the petitioners. The petitioners filed their rejoinder and affirmed their contents and denied the contents of the written statement filed by the respondent. The respondent did not deny the fact that the dead body was given to the legal heirs/friends of the deceased. A.R. of the petitioner summoned the Record Clerk of G.T.B.Hospital, Delhi with the record relating to the death of Late Satya Pal who appeared in the Court and filed all the record, the residence of the deceased was mentioned as godown of the respondent at U.P.Border and some one from the godown brought the injured from the place of incident to the Hospital. This fact indicates that the deceased was employee of the respondent. The other side did not

bring any record to show that the deceased was not working with them. Only evidence was led that record was destroyed but there is no entry lodged with the police station in this regard. Thus considering all the facts balance of probability the adverse inference is drawn against the respondent and simply denying carries no value in the eyes of law. Thus I hold that the deceased was the employee of the respondent.

The age of the deceased at the time of his death was 23 years. The petitioner as per Workmen's Compensation Act Schedule is entitled to the following amount of compensation:-

$$\frac{219.95 \times 100 \times 40}{100} = 87,980$$

The petitioner is also entitled to get interest on the principal amount @ 12% per annum from the date of accident till its realization.

The respondent, Patel Roadways Pvt. Ltd. is directed to deposit the above said amount alongwith a sum of Rs.2000/-on account of funeral charges within 30 days from the date of order, failing which the said amount will be recovered as land revenues.

As the amount of compensation was not deposited in the court within the period prescribed by law, a notice be sent to the respondent why penalty @ 50% on the Principal amount should not be imposed.”

6. As per the finding arrived and applying the statutory formula, a compensation of Rs.87,980/- alongwith interest at 12% per annum from the date of the accident has been awarded.

7. Before me, counsel for the appellant urged the following three contentions:-

(i) There was no relationship of employer and employee between the appellant and the deceased Satya Pal. It is argued that respondent no.1 herein/claimant did not lead any evidence to show the relationship of

employer and employee. It was prayed that the petition was therefore liable to be dismissed on this short count alone.

(ii) Commissioner had no territorial jurisdiction to try the petition under the Act.

(iii) The deceased Sh. Satya Pal, was only a casual worker, and casual workers as per the definition of workman which existed at the time when accident took place excluded a casual workman, and therefore, the dependants of Satya Pal were not entitled to compensation claimed.

8. Taking the third aspect first, I may note that there is no such defence in the written statement of the deceased workman being only an employee of casual nature and hence excluded from the purview of the Act. No such issue has been framed and thus no such issue has been dealt with by the Commissioner because obviously this ground was not urged before the Commissioner. Thus, this factual ground which has not been urged before the Commissioner, cannot be urged for the first time before this Court in appeal.

9. So far as the second ground of territorial jurisdiction is concerned, once again, written statement/pleading existed only of a general defence of lack of territorial jurisdiction ie without specifically pleading as to how territorial jurisdiction is not there. No specific facts as to how territorial

jurisdiction was not there, were pleaded. Also, no issue was got framed, thus this aspect was also not pressed before the Commissioner. In any case, on a query, counsel for the appellant concedes that registered office of the appellant company is at Delhi, and therefore, counsel for the respondent is justified in relying upon Section 21(1) (c) of the Act as per which Commissioner has jurisdiction where the registered office of the employer company is situated.

10. I may note that counsel for the parties state that originally the claim petition was filed at Ghaziabad but was subsequently transferred to the Commissioner at Delhi and which is a correct procedure inasmuch as, sub-Section 2 of Section 21 provides transfer of proceedings by the Commissioner who does not have jurisdiction to the Commissioner who has jurisdiction.

11. That takes me to the main argument which is urged before me on behalf of the appellant that there was no relationship of employer and employee between the parties. On behalf of the appellant in support of this argument reliance is placed upon the judgment of a learned Single Judge of the Madhya Pradesh High Court in the case of ***Dhyan Singh Vs. Raman Lal 2001 LLR 148***. Para 4 of the judgment is relied upon and which reads as under:-

“4. I have also perused the oral evidence of claimant to satisfy myself as to whether he could be held to be in the employment of respondent no.1. I do not think it is possible. The evidence of other witnesses –Gajraj Singh examine by the claimant does not support the version of claimant. It shows that he was working with one Narendra Sharma. The submission of learned counsel for the appellant that why should claimant file a false claim against respondent does not appeal to me. By this inference, I can not draw a conclusion that contract of employment has emerged. To prove a contract of employment, there has to be a direct evidence to show some nexus between the claimant and the respondent. This can be of any kind such as appointment letter, monthly payment slip, deduction of PF, payment of any dues which would show that he was in the employment any correspondence wherein the respondent has admitted that claimant was in his employment. In substance, the court are in favour of documentary evidence to record a definite finding of documentary evidence to record a definite finding on such type of issue. They are the best piece of evidence for coming to a conclusion one way or the other.”

12(i) A reading of the reasoning of the Commissioner given in para 12 of the impugned order which has been reproduced above shows that the Commissioner has given finding as to existence of relationship of employer and employee on two basic counts. First is that the hospital record showed that the deceased was brought to the hospital by an employee of the appellant one Sh. Madan Lal son of Sh. Prem Singh whose address was written as resident of the office of the appellant. The second reason was that the appellant company failed to file any record to show that the deceased Sh. Satyal Pal was not included in the list of employees.

(ii) Learned counsel for the appellant argues that the onus of proof was

upon the claimant before the Commissioner, respondent no.1 herein, to show that relationship of employer and employee existed, and this the respondent no.1 has failed to discharge and consequently, the observations in the case of *Dhyan Singh (supra)* squarely apply to the facts of the present case.

(iii) I am unable to agree with the argument as raised on behalf of the appellant because as per Section 106 of the Indian Evidence Act 1872, where any fact is within the knowledge of a person, the burden of proving that fact is upon him. If the deceased Satya Pal was not the employee of appellant, the records of the appellant company would have shown that the deceased was not its employee. There was nothing easier for the appellant company to do than to file its records to show that the deceased Satya Pal was not on its rolls, however, the appellant company failed to file its record.

(iv) Counsel for the appellant argued that the records were lost in the fire, however, I find this argument to be meritless and only a convenient argument because a gargantuan company such as the appellant would not only have records at one place, but will have records at various places including with its auditors, taxation consultants etc etc with respect to list of its employees. The list of employees would be available not only in the registers of the appellant company but also in various returns which appellant would have filed either under the Employees State Insurance Act,

1948 or Employees Provident Fund Act and so on. Therefore, provision of Section 106 of the Evidence Act squarely applies in this case and I would like to draw adverse inference against the appellant in the facts of the present case. The judgment in the case of *Dhyan Singh (supra)* therefore relied upon by the appellant has no application to the facts of the present case.

13. I am also inclined to believe that there existed a relationship of employer and employee because the deceased was found in the godown/premises of the appellant company at the time of fire; the deceased was brought to the hospital by one Sh. Madan Lal and whose address is stated to be that of the appellant and the appellant could have shown that Sh. Madan Lal was not its employee and which act has not been endeavoured to be done shown by filing of any record. It would be too much to expect poor workers to have with them records, and much less so by their dependants after their deaths. In fact, onus of proof had in my opinion if not initially been upon the appellant, shifted upon the appellant, once there is deposition on behalf of the respondent no.1 with respect to the existence of relationship of employer and employee, and when taken with the hospital records showing deceased to have been brought by and admitted by employee of the appellant. Thus onus once shifted upon the appellant, the same could be decided by filing the relevant record by the appellant company, but, clearly

and deliberately appellant has failed to file the relevant record.

14. I would also like to state that the appeal under Section 30 of the Employee's Compensation Act lies before this Court only if there is a substantial question of law. Appreciation of evidence in the facts such as the present will not amount to substantial question of law because where two views are possible, and Commissioner takes one possible and plausible view, it cannot be said that a substantial question of law arise as regards the relationship of employer and employee.

15. In view of the above, it is clear that appellant-employer is raising frivolous defences to deny compensation to the respondent no.1, and in a case where the employee had died caused by the severe burn injuries on account of fire in the godown of the appellant and the incident of fire in the godown is very much admitted by the appellant. Accordingly, this appeal is dismissed with costs of Rs.25,000/-. Costs shall be paid to the respondent no.1 within a period of six weeks from today.

MARCH 10, 2014
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VALMIKI J. MEHTA, J.