

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

+ **FAO No.304/2012**

% **22nd May, 2014**

NATIONAL INSURANCE CO. LTD. Appellant
Through: Ms. Shanta Devi Raman, Advocate.

Versus

SH. FAZLU RAHMAN ANSARI & ORS. Respondents
Through: Ms. Pratima N. Chauhan, Advocate
for respondent No.1.
Ms. Sushma, Advocate for respondent
No.2.
Mr.A.S. Rao, Law Officer, DMRC.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') by the appellant/insurance company impugning the judgment of the Commissioner dated 27.4.2012 by which the Commissioner has allowed the claim petition filed by the respondent no.1 herein and granted compensation.

2. The case of the respondent no.1 before the Commissioner was that he was a workman employed as a supervisor-cum-labour by M/s.

Simplex Concrete Piles India Ltd. M/s. Simplex Concrete Piles India Ltd was a contractor of the respondent no.3 herein M/s. Delhi Metro Rail Corporation. Respondent no.1 pleaded that on 26.2.2001 he reported for duty at the site at 8.30 A.M and in the evening at about 6.00 P.M. when he alongwith other workers were placing PCC iron support channel in an underground place (ditch), suddenly some portion of the earth near the ditch slid down and as a result of which he fell down on the iron channel and suffered injuries in his lower limbs. Respondent no.1 states that he was given first aid by the site engineer and taken to a private hospital on the next date for treatment. Respondent no.1 states that he received further treatment from Taiba Nursing Home after going back to his village. Respondent no.1 pleaded that he again came back to Delhi and received treatment from Ram Manohar Lohia Hospital from 3.7.2001 to 17.7.2001 and thereafter as an outdoor patient. Respondent no.1 pleaded disability of 75% in terms of the certificate issued by the Ram Manohar Lohia Hospital and accordingly filed the subject claim petition.

3. There were three respondents before the Commissioner. Respondent no.1 before the Commissioner was M/s. Simplex Concrete Piles (India) Limited and which is respondent no.2 in this appeal. Respondent No.2 before the Commissioner was M/s. Delhi Metro Rail Corporation and

which is respondent no.3 in this Court. The appellant/insurance company was respondent no.3 before the Commissioner. M/s. Simplex Concrete Piles (India) Ltd denied that respondent no.1 was its employee. M/s. Simplex Concrete Piles (India) Ltd stated that they had engaged a sub contractor namely Mr. Bachu Gupta to carry out the contractual work and which was being done by Mr. Bachu Gupta under his supervision and control. It is specifically pleaded by M/s. Simplex Concrete Piles (India) Ltd that not only there was no relationship of employer and employee of the respondent no.1 with the M/s. Simplex Concrete Piles (India) Ltd but also that there was no accident at any of the project site or any other place in which the respondent no.1 herein was involved.

4. M/s. Delhi Metro Rail Corporation in its written statement stated that the claim petition had been filed to extort money and there was no relationship of employer and employee.

5. The contractor-Mr. Bachu Gupta filed his written statement and though admitted that he was engaged in the work of labour supply to M/s. Simplex Concrete Piles (India) Ltd, but, it was denied that respondent no.1 was the employee on the date of the accident i.e on 26.2.2001. Mr. Bachu Gupta pleaded that respondent no.1 was earlier an employee and thereafter he had left for his village at Jharkhand. It was further pleaded by Mr. Bachu

Gupta that there was no question of the respondent no.1/claimant during the period of employment working at a depth of 5 mtrs because during the period of employment he used to work on the surface only by marking attendance and issuing materials such as welding wire, nails, plywood, hand gloves, shoes, helmet etc. The happening of the accident on 26.2.2001 is denied and in fact it is stated that the sites of Delhi Metro Rail Corporation are regulated and there is a safety officer, first aid provision etc etc. It was contended that in the present case since there was no accident, there is no report of the accident and also no MLC.

6. The Commissioner has held that there was a relationship of employer and employee and that there was an accident arising out of and in the course of employment.

7(i) In my opinion, the impugned order of the Commissioner has caused grave injustice to the appellant and suffers from clear cut perversity. No doubt, onus in a case under the Act can be very easily discharged, however, the onus of the factum with regard to relationship of employer and employee on the date of the accident and also the accident actually happening at the site of the employer has to be discharged by that much credible evidence which the Court will believe. Whether onus is discharged or not depends on facts of each case and facts and circumstances of each

case have to be taken as a whole by the Commissioner and the Court to determine whether there was a relationship of employer and employee and whether the accident took place at the site of the employer.

(ii) In the present case, in my opinion, no accident took place at the site of the contract on 26.2.2001. I would like to note that the sites of Delhi Metro Rail Corporation are well regulated by means of proper contracts which run into hundreds of pages. Delhi Metro Rail Corporation imposes strict conditions on its contractors and sub-contractors which are appointed by the contractors with respect to reporting of accident and also for giving of treatment at site and thereafter further treatment to an injured employee. Even if we take that there is no such contract, but, the fact of the matter is that if there was an accident at site, there would either be an FIR or in the very least a report which is made to the police by the respondent no.1 on the date of the accident or soon after the date of the accident. This is not there in the present case. Also, in my opinion, it is inconceivable for companies like Delhi Metro Rail Corporation and M/s. Simplex Concrete Piles (India) Ltd to conceal happening of any accident if it takes place because at the site there are bound to be dozens and dozens of workers and if there is an accident at least one of the co-workers of the respondent no.1 would have come and deposed with respect to happening of the accident, and which is

not the position in this case. The most important aspect to be noted is that there is no medical record whatsoever filed by the respondent no.1 of the date of the accident or immediately after the date of the incident of any the hospital or nursing home at Delhi showing the treatment and the injuries of the respondent no.1 in an incident on 26.2.2001.

8. Therefore, on a conspectus of the entire facts it is not possible for this Court to hold that the respondent no.1 discharged the onus with respect to there being a relationship of employer and employee. Even if we take the fact that there was a relationship of employer and employee, the most important aspect is that the respondent no.1 has failed to prove that actually he was injured in an incident at the site on 26.2.2001 and happening of which accident at site is a *sine qua non* for claiming of compensation under the Act.

9. Learned counsel for the respondent no.1 vehemently argued two aspects before this Court. Firstly, it is argued that the strict provisions of CPC and Evidence Act do not apply to the proceedings before the Commissioner and therefore this Court should take note of the document Ex.AW1/2, statement made by Mr. Bachu Gupta to the police (not known where) in which Mr. Bachu Gupta admits the factum of the incident and the employment. The second argument urged is that since Mr. Bachu Gupta

admits having paid compensation (Mr. Bachu Gupta admitting payment of Rs.5,500/- and which is before the Labour Commissioner where the respondent no.1 filed the case) and therefore it is sufficient to hold that there was a relationship of employer and employee and Mr. Bachu Gupta accepted the employment as also the happening of the accident.

10. No doubt, strict provisions of CPC and Evidence Act do not apply to proceedings before the Commissioner, but, surely there has to be some modicum of evidence which the Courts consider to be a discharge of onus of proof of relationship of employer and employee and happening of the accident. Each case has to be examined as per its facts and the evidence as to whether at least some amount of evidence exists for the Court to accept the existence of relationship of employer and employee and happening of the accident. I have already given the detailed facts above and which show in a case such as the present, and which is a site of the Delhi Metro Rail Corporation, where there is absolutely no medical record filed by the respondent no.1, it cannot be held that there was relationship of employer and employee and that an accident took place on 26.2.2001 at the site of Delhi Metro Rail Corporation through its contractor M/s. Simplex Concrete Piles (India) Ltd and still further through the sub contractor Mr. Bachu Gupta. I may note that though the counsel for the respondent no.1 relies

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upon Ex.AW1/2, in my opinion, this document cannot be said to have authenticity for this Court to believe and rely upon the same. This is because the document which is on the record of the Commissioner and exhibited as Ex.AW1/2 is only a photocopy. I have not been pointed out any other document which is an original document, much less bearing the signatures of Mr. Bachu Gupta, or the fact that this document was received by the police authorities (not known where) i.e there is no original stamp of the police authorities that such a statement was made to the police authorities. I therefore reject the so called document Ex.AW1/2 both on the ground of its existence/authenticity.

11. So far as the argument urged that Mr. Bachu Gupta had paid a sum of Rs.5,500/- before the Labour Commissioner to the respondent no.1 is concerned, in my opinion, this cannot help the respondent no.1 because the amount of Rs.5,500/- is such a small amount that Mr. Bachu Gupta was right in pleading that this amount was given as a humanitarian aid to the respondent no.1 who was once an employee. In fact, the amount of Rs.5,500/- is so small that any person who is a contractor in order to avoid frequent visits to the Labour Commissioner leading to wastage of time and money in this regard would prefer to pay a sum of Rs.5,500/- so that the issue is not carried any further before the Labour Commissioner.

12. At the end, I would like to comment that I was inclined to issue directions for criminal prosecution of the respondent no.1 under Section 340 Cr.P.C. because it is high time that totally frivolous and false claims before the Commissioner are stopped from being filed, however, considering the poverty of the respondent no.1 and his physical condition I am not issuing any directions to initiate proceedings under Section 340 Cr.P.C. against the respondent no.1.

13. In view of the above, the appeal is allowed. Impugned judgment of the Commissioner dated 30.4.2012 is set aside. Parties are left to bear their own costs. Since respondent no.1 has already received the amount pursuant to the order of the Commissioner, the appellant can recover the same from respondent no.1 in accordance with law.

MAY 22, 2014
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VALMIKI J. MEHTA, J.