

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO No. 357/2013
% **FEBRUARY 13, 2014**
 MOHAN LAL Appellant

Through : Mr. Sugriva Dubey, Advocate.

Versus

CHHOTE LAL & ORS Respondents

Through : Mr. R.K.Nain, Advocate for R-1.

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 impugning the judgment of the Commissioner dated 31.05.2013 which has allowed the claim petition filed by the respondent no.1 herein.

2. The facts of the case are that the respondent no.1 (applicant before the Commissioner) was employed by respondent no.2/contractor (also the respondent no.2 before the Commissioner) as a mason (Raj Mistri) for

the work to be performed of construction of Hotel owned by appellant (respondent no.1 before the Commissioner). On 20.07.2005, when the respondent no.1 reached his place of work at 7575, Ram Nagar, Nabi Karim, New Delhi, he was put to his job and he was working on a pad which was not in order and was in a state of wear and tear. It is pleaded that the defect in the pad was brought to the notice of the appellant and the respondent no.2 but the respondent no.1 was asked to continue his work and at about 5.00 PM, the respondent no.1 fell down from the said pad to the ground. In the said accident, the respondent no.1 sustained injuries all over his body including multiple compound fractures in his right leg. He also sustained injuries in his right eye and right hand. As a result of the accident, an FIR No.296/2005 dated 11.10.2005 was registered with the Nabi Karim Police Station . It is pleaded that after the accident, respondent no.1 suffered by 100% permanent disability for performing his profession of a mason in which he was occupied at the time of the accident as his movement is restricted and his leg is not smooth and he cannot work smoothly in his ordinary job of mason.

3. The appellant herein, respondent no.1 before the Commissioner, claimed that there is no relationship of employer and

employee between the parties and that the site in question is not a Hotel but residential premises of one Shri Praveen Kumar, who is the son of the appellant where only some small repair work was going on.

4. The Commissioner, after considering the various issues, has given the following findings and conclusions that the respondent no.1 was working at the site in question and was employed as a mason(Raj Mistri) by the contractor Vinod Kumar Yadav/respondent no.2 under whom the workman was employed for working at the site of the appellant. It has been held that by virtue of Section 12 of the Act, the liability in such a case falls on the owner of the site in addition to the Contractor with whom the workman was directly employed. I may note that in terms of Section 12 of the Act, there is joint and several liability of not only the Contractor who actually employed the mason/workman, but also of the person at whose site the work is going on and where the employee does the work. The owner of the site is referred to as the principal in Section 12. The relevant observations of the Commissioner in the impugned judgment read as under:-

“After considering the pleadings of the parties, affidavits/evidences adduced by them and copies of the police documents, i.e. FIR No.296/2005 u/S.337/34 IPC, MLC Sheet dated 20/07/05, Charge-sheet, Statement u/S.161 Cr.PC, Bail report, discharge report from Dr.

Ram Manohar Lohia Hospital and treatment records, it is amply clear that facts are proved and these evidence justify the legitimate inference as the incident matches with the date and place of accident occurred on 20/07/2005. I infer that the injury has caused to the applicant when he was working in the premises owned and controlled by respondent No.1. And it was his work on which the accident was caused. The respondent No.1 though denied the averments made in the claim application but has admitted to the extent that the repair work was being carried out at the premises bearing no.7575, Ram Nagar, Nabi Karim, New Delhi, and an FIR No.296/2005 was registered against him. The respondent has also admitted that out of courtesy, the medical expenses were borne by him. Further in the written argument, the respondent has admitted that he has been serving food and sometimes temporary shelter to the needy.

Even if the averments made by the Respondent No.1 that he had contracted out the work of repair through Sh. Vinod Kumar Yadav and Sh. Chhote Lal Rajak was employed by him, the respondent No.1 being the Principal Employer as per the provision of Section 12 is liable to pay compensation to the injured/disabled claimant. In the given situation, I hold that the injury has been caused out and during the course of employment. The said issue is decided in favour of the applicant and against the respondents". (underlining added)

5. An appeal under Section 30 lies only where there is substantial question of law. Section 30 does not permit reappraising of findings of facts in the appeal which is filed before this Appellate Court. Unless there is a

substantial question of law, Courts are mandated not to interfere with the findings and conclusions of the Commissioner.

6. In the present case, the findings of facts and conclusions of the Commissioner are unimpeachable and the same are based not only on the criminal case documents but also on the medical records of Ram Manohar Lohia Hospital. Accordingly, no substantial question of law arises in this appeal to be entertained under Section 30 of the Act.

7(i) Counsel for the appellant very vehemently argued that the appellant was not the owner of the premises, but the owner of the premises is one Smt. Parasmani, daughter-in-law of the appellant. It is thus argued that since the appellant was not the employer and the site did not belong to him, but belonged to his daughter-in-law, that is, wife of his son Praveen Kumar, appellant cannot be held liable.

(ii) I cannot agree with the arguments urged on behalf of the appellant because firstly, the argument now raised is against the written statement of the appellant filed before the Commissioner wherein the premises was said to be owned by Shri Praveen, son of the appellant. Today, now a new case is put up that the premises were owned by Smt. Parasmani, daughter-in-law of the appellant. Secondly, even if I agree that

such a case is pleaded in the written statement of the appellant before the Commissioner, it was the appellant who had to prove this case because such facts were in his knowledge and the knowledge of his family members. The workman/employee in this case had discharged his onus by filing the criminal case documents and medical records and the onus thereafter stood shifted upon the appellant but the appellant failed to discharge the onus by filing documents to show that it was his son Praveen Kumar who was owner of the site where work was being carried on and not the appellant.

8. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

February 13, 2014
‘sn’

VALMIKI J. MEHTA, J.