

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

+ **FAO No. 362/2013 & CM 14681/2013 (Stay)**

% **25th April, 2014**

DELHI DEVELOPMENT AUTHORITY & ANR. Appellants
Through: Mr.Arun Birbal, Advocate.

Versus

RAJU@ MAYA BEN & ORS. Respondents
Through: Ms. Pratima N. Chauhan, Advocate
for respondent no. 1.
Mr. Deepak Dewan, Advocate for
respondent no. 2.

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") impugning the judgment of the Commissioner dated 16.7.2013 by which the claim petition filed by the respondent no. 1 herein has been allowed.

2. The facts of the case are that the respondent no. 1 was employed by the respondent no. 2 herein (respondent no. 3 before the Commissioner).

Respondent no. 2 was appointed as a labour supply contractor by the

appellant no.1 (respondent no. 1 before the Commissioner) and the
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contractor supplied labour, including respondent no.1, to the appellant no.1 for various works to be done of the appellants including electrical work which was being performed by the respondent no. 1. Respondent no. 1 on 21.4.2012 at about 2.30 p.m. was attending to an electrical defect in the point in the overhead ceiling of the high rise building of the complex and while doing this work the spike of the ladder collapsed and as a result of this he suffered multiple fractures and other injuries on his body. Respondent no. 1 therefore claimed to have become totally crippled and disabled with 100% loss of earning capacity and accordingly the claim petition was filed.

3. Before advertng the issues to be decided it is necessary to refer to Section 12 of the Act and which reads as under :

“12. Contracting- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any (employee) employed in the execution of the work any compensation which he would have been liable to pay if that (employee) had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the (employee) under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the

contractor (or any other person from whom the (employee) could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from which the (employee) could have recovered compensation) and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a (an employee) from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

4. As per Section 12 of the Act two persons are liable to the employee who suffers an accident arising out of and in the course of the employment. One is the parent employer who employed him and second is the person with whom the employee is working on the directions of his parent employer, called the principal under Section 12. As per Section 12 of the Act the person with whom the employee is working, though not employed by such a person, such person became a principal employer and an employee is entitled to claim compensation from the person with whom he is working ie the principal although not directly employed by the said person/principal. The right given under Section 12 of the Act is only an alternative right and an employee can also sue his parent employer. In the present case, the

parent employer respondent no. 2 herein and the person with whom the respondent no.1 was working was the appellant no.1. The requirements of Section 12 of the Act are therefore clearly satisfied in the facts of the present case.

5. The issue argued before this Court on behalf of the appellant is that since the respondent no. 1 was not employed by the appellant no.1, therefore, no liability arises of the appellant no.1, in my opinion, is clearly answered against the appellant no.1 in view of the clear language of Section 12 of the Act which has been reproduced above. Appellant no.1 therefore, in terms of Section 12 of the Act is principal in case injuries were caused to respondent no.1/employee while working with the appellants, although the respondent no. 2 was the actual/parent employer of the respondent no. 1 herein.

6. In this regard, I may note that counsel for the respondent no. 2/parent employer sought to argue that no proof is filed showing that respondent no. 1 was employed by the respondent no. 2, but once the appellant no.1, and which is a Government body being the Delhi Development Authority, has admitted that the respondent no. 1 was working with the appellants because the respondent no. 2 herein was contracted to supply labours for doing the work of the appellants, I do not think that any substantial question of law

arises to reappraise the findings of facts that the respondent no. 1 is allegedly not employed by the respondent no. 2 herein. In addition to the above aspect, I may note that the respondent no. 2 herein admitted before the Commissioner that appellants as per the work order were being supplied labour by the respondent no. 2 for working with the appellant, and for the period in question when the accident happened, the work order was valid and in such circumstances the respondent no. 2 should have filed a register of its employees but the respondent no. 2 deliberately concealed this document and accordingly the Commissioner has rightly held the respondent no. 1 to be the employee of the respondent no.2 and who as per the direction of the respondent no. 2 was doing the work for the appellants.

7. The next argument urged on behalf of the appellant is that the appellant has suffered only 52% disablement in the loss of earning capacity and the Commissioner should not have taken the disability as 100% disability. This argument urged on behalf of the appellant is totally frivolous because the Supreme Court way back in 35 years in the case of *Pratap Narain Singh Deo Vs. Shrinivas Sabata and Anr.* (1976) 1 SCC 289: 1976 ACJ 141 has held that if a person who suffers an accident is unable to perform the duties which he was performing before the disability is caused then the disability is to be taken as 100%.

I may also in this regard refer to Section 2(l) and Section 4(1)(b) of the Employee's Compensation Act, 1923 as per which sections total disablement means such disablement either of temporary or permanent nature which incapacitates an employee for doing work which he was capable of performing at the time of accident resulting in disablement. In the present case, in view of the serious injuries to the respondent no. 1 which has resulted in 52% disablement, the respondent no. 1 cannot any longer perform the work of electrician at high places, and therefore, the Commissioner has committed no illegality in taking the disability as 100%. A disablement of as large as 52% in the facts of this case is that no one will employ the respondent no.1 as an electrician.

8. Learned counsel for the appellants finally sought to argue that the Commissioner has wrongly taken the statutory wages which are fixed, and for which purpose it is argued that as per Section 2(m) actual wages should not be taken, however, the argument totally lacks in substance because Section 4(1)(b) was added in the Employee's Compensation Act by Act 45 of 2009 so as to take away any dispute as to the quantum of the wages required to be taken for the purpose of calculation of wages as per Section 4 of the Act and it could not be disputed before me that the figure of wages taken by the Commissioner as the specific monthly

wages is that figure given in the official gazette of the Government. Once that is so this argument urged on behalf of the appellants that the Commissioner has wrongly taken the figure is also without merit and is therefore rejected.

9. In view of the above, the appeal is dismissed with costs of Rs. 25,000/- which shall be paid within four weeks from today. The amount deposited by the appellants before the Commissioner be released to the respondent no. 1 along with accrued interest within four weeks from today.

APRIL 25, 2014
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VALMIKI J. MEHTA, J