

Court No. - 19

Case :- FIRST APPEAL FROM ORDER DEFECTIVE No. - 123 of 2022

Appellant :- Ram Charan And Another

Respondent :- Smt. Susheela And 7 Others

Counsel for Appellant :- Arvind Kumar Pathak, Shitla Prasad Tripathi

Hon'ble Jaspreet Singh, J.

Order on C.M.A. No. 1 of 2022

Heard learned counsel for the appellants.

The instant appeal has been preferred by the claimants assailing the award passed under Section 30 of the Employee's Compensation Act, 1923. The instant appeal is accompanied by an application seeking condonation of delay and it was reported that the appeal was barred by 94 days.

On the application seeking condonation of delay bearing C.M.A. No. 1 of 2022, notices were issued to the respondents and as per the office report dated 29.11.2022, the service is sufficient, however, none has put in appearance on behalf of the respondents.

Considering the application and the grounds shown, this Court finds that the explanation for the delay is sufficient, accordingly, the delay is condoned. The application shall stand allowed. The appeal shall be treated to be filed within time.

Office shall allot a regular number to the aforesaid appeal.

Order on Appeal

The Court thereafter has heard the learned counsel for the appellant in the appeal for the purposes of formulating the substantial questions of law.

The learned counsel for the appellant has urged that the impugned order dated 17.05.2022 passed by the Workmen Compensation Commissioner is bad in the eyes of law, inasmuch as, the said award has been passed on a review-application and in terms of the Scheme of the Act of 1923 no such power of review is conferred on the Workmen Compensation Commissioner. Any party being aggrieved only has the remedy of filing an appeal in terms of Section 30 of the

Act of 1923.

It is further submitted that the Workmen Compensation Commissioner has not appreciated the evidence properly and has granted the compensation which is beyond jurisdiction and as such the award deserves to be set aside.

Having considered the aforesaid submissions and from the perusal of the material on record, this Court finds that the appellant is not quite correct in making his submissions.

The record indicates that Ram Jagat Chauhan on 14.01.2004 while working on the terrace of the appellants was affixing tiles from where he fell 15 feet below and sustained grievous injuries and was permanently disabled. It is in the aforesaid context that a claim petition was filed by the wife of Ram Jagat Chauhan as Ram Jagat who subsequently died during the pendency of the proceedings.

The proceedings came to be contested by the appellants denying the aforesaid contentions and further stated that the appellants were not raising any constructions nor they required any affixation of tiles, a false case has been filed against the appellants.

It was stated that actually the alleged workman had been chased by a wild ox and he received injuries and in order to wrongfully gain compensation, the instant case was preferred.

The record further reveals that the earlier claim petition has been dismissed on 22.01.2011, however, later a review-application was moved which came to be allowed by means of the impugned award dated 31.05.2012 and thereafter the Workmen Compensation Commissioner by means of award dated 17.05.2022 allowed the claim petition and awarded a sum of Rs. 4,72,571/- along with 6% interest, however, from the record, it would reveal that the appellants had earlier filed Writ-C No. 1003880 of 2012 assailing the order dated 31.05.2012 by which the Workmen Compensation Commissioner accepted the Review-Application.

The said writ petition of the appellant came to be dismissed on 11.04.2022 wherein the Coordinate Bench of this Court held that the ground for review before the Workmen Compensation Commissioner was of procedural nature and since the relevant piece of evidence i.e. the disability certificate of Ram Jagat Chauhan was ignored, hence, there was no error or illegality in the order dated 31.05.2012.

Once, the issue raised by the appellant regarding the power of Workmen Compensation Commissioner to entertain a review in terms of the Act of 1923 was dismissed and rejected by a Coordinate Bench of this Court in Writ-C No. 1003880 of 2012 and this order dated 11.04.2022 passed in the aforesaid writ petition was not further challenged, accordingly, the appellants who thereafter contested the claim petition on merits at a subsequent stage cannot raise the same ground as that would be hit by the principles of res-judicata which not only applies in a subsequent proceedings but also in the same proceedings at different stages, thus, the ground raised by the appellant regarding the power of review is no more open and this does not give rise to any substantial question of law in the present case.

In so far as the other submission of learned counsel for the appellant is concerned, it would be found that even after the fresh award dated 17.05.2022 was passed after affording full opportunity of hearing and taking note of the evidence and the material on record, the appellants had filed another writ petition bearing Writ-C No. 4062 of 2022 which was resisted and the same came to be dismissed on the ground of availability of statutory remedy. It is thereafter that the appellants have filed the instant appeal and from the perusal of the material including the disability certificate, this Court finds that the Workmen Compensation Commissioner has appropriately considered the evidence and the material on record and has made the award dated 17.05.2022 which is covered by pure findings of fact. There is no error apparent on the face of the record which may persuade this Court to entertain the aforesaid appeal on a substantial question of law.

This Court is satisfied that no substantial question of law arises in the instant appeal which is ***dismissed*** accordingly. The award dated 17.05.2022 passed by the Compensation Commissioner is affirmed. Costs are made easy.

Order Date :- 11.12.2023

Asheesh