

Court No. - 17

Case :- WRIT - C No. - 10252 of 2023

Petitioner :- M/S Ankit Polyplast Pvt. Ltd. Thru. Narender Jain, Director, Delhi

Respondent :- Bhanu Pratap Tiwari And 2 Others

Counsel for Petitioner :- Sarvesh Kumar Tiwari

Counsel for Respondent :- Pradeep Kumar Singh, Shishir Pradhan

Hon'ble Alok Mathur, J.

1. Heard Sri Prashant Kumar Mittal, learned counsel for the petitioner, Sri Pradeep Kumar Singh for respondent No.s 1 and 2 and Sri Shishir Pradhan for respondent No.3.

2. By means of the present writ petition the petitioner has challenged the order dated 11.1.2022 passed by Workmen Compensation Commissioner, as well as order dated 27.6.2023 rejecting the application for review filed by the petitioner.

3. It is stated that the present dispute pertains to workman, namely, Vishal Tiwari, who was working with the petitioner and died on 6.6.2017 while on duty. The Workman's Compensation Commissioner while adjudicating the claim at the behest of the workman has allowed the claim and passed award for an amount of Rs.9,14,160/-.

4. A preliminary objection has been raised on behalf of the workmen that the petitioner has equal efficacious remedy of filing appeal under Section 30 Employees State Compensation Act, 1948. The said preliminary objection has been contested on behalf of the petitioner. He submits that an appeal would not be an efficacious alternate remedy in the present case in as much as mere insurance of the workman has been adjudicated by the Workmen's Compensation Commissioner which has been challenged. In this regard he submits that the workman was duly insured with Employees State Insurance Corporation and consequently in view of the provision of Section 53 of the Act 1923 the dispute is liable to be adjudicated by the Employees Compensation Commissioner. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of *Whirlpool Corporation VS. Registrar of Trade Marks, Mumbai reported in AIR 1999 SC 32*.

5. In support of the preliminary objection it has been submitted that according to Section 53 of the Act it is provided that an insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or

from any other person, any compensation or damages under the Workman's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act. He submits that it was the duty of the petitioner to demonstrate that the workman was an insured person and once this burden was discharged then only bar of Section 53 would come into operation. He further submits that the matter was duly considered in the order wherein it was stated that if on the same date on which he has been insured there was no material to conclusively say that he fell within the definition of an insured person. This Court is of the considered opinion that the petitioner should be relegated to alternate remedy of appeal where the said issue raised by the petitioner can adequately be adjudicated.

6. Considering the facts and material adduced by him and the case relied upon in the case of *Whirlpool Corporation VS. Registrar of Trade Marks, Mumbai reported in AIR 1999 SC 32* where it has been stated that in case any judgment is without jurisdiction a person shall not ordinarily be relegated to his alternate remedy of appeal.

7. In the present case, the question of jurisdiction is itself a contested question of fact and law as to whether the workman was an insured person or not and, therefore, the facts of the present case are distinguishable from the judgment relied upon by learned counsel for the petitioner.

8. Accordingly, the petition is **relegated to the remedy of appeal.**

(Alok Mathur, J.)

Order Date :- 23.11.2023
RKM.