

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4968 of 2011 (O&M)

Date of Decision:21.02.2015

Panna Lal and another

....Appellants

Versus

Kuldeep Singh

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Savita Tanwar, Advocate for the appellants.

Mr. J.P. Dhull, Advocate for the respondent.

NAVITA SINGH, J.

1. This appeal is preferred against the order dated 27.6.2011 passed by Commissioner under Workmen's Compensation Act, whereby compensation was awarded to the respondent for the injury received by him during the course of employment. The employer has come up in appeal stating that nothing was payable in view of the settlement already made between the parties.

2. Counsel for the appellants referred to Section 3 (1) (b) (ii) of the Employees' Compensation Act (Act for short) in support of the arguments that there was willful disobedience on the part of the employee, as he had flouted the instructions of the employer. Respondent was working at the Atta Chakki of the appellants and he tried to control the running of the machine with the wooden danda whereas he had been instructed to use an iron rod. He was also told not to make an effort to control the belt of the machine without stopping it but he did not pay any heed and got injured due to his own fault.

3. Panna Lal, appellant deposed by way of Ex.RW1/A in the examination-in-chief that the claimant i.e. respondent herein, without knowledge

of the employer used the wooden danda which broke and injured him. It was not the instruction of the witness that wooden batten should be used. It is always an iron rod which has to be used. No cross examination was conducted on Panna Lal on the said aspect. Rather most of the cross examination was on the settlement made between the parties under which according to the employer, respondent was paid an amount of Rs.1,50,000/-. The only question put regarding the use of wooden batten and stopping of belt of the machine was regarding the manner in which the belt was stopped. Panna Lal had stated that whenever the belt was to be stopped, the machine had to be switched off. The account of the witness that the respondent was flouting the instructions of the employer went unchallenged and amounted to admission.

4. Furthermore, the respondent appearing as CW1 admitted his signature on the compromise Ex.R1 but still a suggestion was put to appellant Panna Lal that Ex.R1 did not bear the signature of the respondent. It is, therefore, clear that the respondent had entered into the compromise and received the amount but tried to wriggle out of the same to claim additional compensation through court for the appellants.

5. Counsel for the respondent argued that the compromise Ex.R1 could not be believed because it was typed written whereas Jai Pal, witness of the employer, who appeared as RW2, stated that the compromise was handwritten. This argument would not be of much consequence because the respondent had admitted his signature on Ex.R1 when it was shown to him and it would be immaterial if Jai Pal had forgotten as to whether the compromise was typed out or was handwritten. If the respondent had admitted his signature, he was to explain how it happened.

6. Also there is clear defiance of the instructions of the employer by the respondent and, therefore, the accident occurred on account of the fault on the part of the respondent himself. The respondent did not move the court with clean hands.

7. Sub Section (5) of Section 3 of the Act would also come into play because an agreement had come into existence between the parties providing for the compensation of the same injury. Just because the Act is a beneficial legislation tilting towards the employee, it would not always mean that the employee should be allowed to take undue advantage to fleece the employer. The respondent admitted his signature on Ex.R1, meaning thereby that the compromise was entered into by him and the amount received. In such event, he in order to extract more money from the employer, filed the claim petition.

8. The appeal is allowed. Impugned order is set aside and the petition filed by the respondent under the Act is dismissed.

(NAVITA SINGH)
JUDGE

21.02.2015
Ishwar

Whether to be referred to reporter: Yes