

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

Judgment Reserved on: September 07, 2015

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Judgment Delivered on: September 10, 2015

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LPA 61/2010

MEHAR SINGH

..... Appellant

Represented by: Mr. Rajiv Aggarwal, Advocate.

versus

CEMENT MANUFACTURES ASSOCIATION Respondent

Represented by: Mr. Raj Birbal, Sr. Advocate
instructed by Ms. Raavi Birbal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Mehar Singh was working as a Driver with the management since September 01, 1982 when he was charge-sheeted on March 05, 1997 on the allegation that on February 16, 1997 he was driving the company's car under the influence of liquor and had hit a Maruti car. In the enquiry conducted Mehar Singh was found guilty of the charges. Taking into account his past conduct his services were terminated with effect from November 17, 1997.

2. In the industrial dispute raised Mehar Singh challenged the validity of the enquiry on three grounds i.e. he was not allowed to be represented by a lawyer of his choice, enquiry officer was biased and enquiry report was perverse. Mehar Singh in his claim admitted that though he was not permitted to engage an advocate of his choice or an office bearer of the Delhi Labour Union, however he had engaged one Shri Mukesh to represent

him. It was the case of Mehar Singh that Mukesh being middle-passed and not aware of the technicalities was not able to cross-examine the witnesses affectively. Referring to the decisions of the Supreme Court the Tribunal held that it was not necessary to provide an advocate to the charged officer particularly when the management was also not represented by an advocate. Further enquiry proceedings revealed that the charged officer had cross-examined the management witnesses himself and had also examined himself in defence during the enquiry proceedings. Referring to the evidence it was noted that the present was not a case of no evidence and no bias could be demonstrated by the charged officer against the enquiry officer and the enquiry being not perverse having followed principles of natural justice, the claim petition was dismissed. The order dated August 21, 2007 passed by the Labour Court was upheld by the learned Single Judge vide the impugned order dated July 28, 2009.

3. Before this Court learned counsel for Mehar Singh urges that the finding of the enquiry officer that Mehar Singh was under the influence of alcohol is perverse in the absence of any medical/ blood test. Reliance is placed on 2009 (123) FLR 521 Munna Lal Vs. Union of India. Further the management claimed insurance qua the damages to the car and in case the driver was drunk or under the influence of alcohol, no insurance amount would have been released which further proves that Mehar Singh was not under the influence of alcohol at the time of the accident. Referring to the decision reported in AIR 1973 SC 1227 Workmen of Fire Stone Tyre and Rubber Stone Corporation of India Pvt. Ltd. Vs. Management & Ors. it is contended that the Labour Court ought to have re-appreciated the evidence produced before enquiry officer to determine whether the allegations against

Mehar Singh were proved or not and also with regard to the proportionality of the sentence.

4. Even though in view of the concurrent finding of the fact by the Labour Court and the learned Single Judge, this Court is not required to look into the facts, however to satisfy ourselves we note that the material on record evinces the conduct of Mehar Singh by driving the company car in a drunken condition from the evidence of all the three witnesses.

5. According to Shri R.Partha Sarthy on February 16, 1997 at around 11.00 AM he heard the noise of the car outside his house and when he came out he saw that Mehar Singh had damaged the car in an accident. On questioning Mehar Singh replied vaguely and incoherently. The car was badly damaged in front, the bumper was broken, bonnet had come up, headlights on one side had smashed, one-side bumper carved in touching the tyre and radiator was profusely leaking. The radiator fluid had left a trail of mark in the middle of road about 100 metres to the accident site. It was found that Mehar Singh had damaged the vehicle of Smt. Swapan Manjari Chetal who complained that Mehar Singh was drunk and was driving dangerously. Though no medical examination of Mehar Singh was got conducted and matter was not reported to the Police, however Partha Sarthy mentioned that two bottles were found in the car which were smelling of liquor.

6. Mrs. Swapan Manjari Chetal with whose car the accident took place deposed that when she came out of the house after hearing the noise she found that her car had been hit by a Maroon colour N.E. car and the car had stopped 100 yards away at the residence of Shri Partha Sarthy. According to her, Mehar Singh who was standing there appeared to be heavily drunk and

the radiator fluid had left the trail. Shri Ashok Singhal another resident of the area was also examined who was taking tea in the courtyard of his house when he heard a loud noise and came out to see that the radiator of the N.E. car profusely leaking. On the assurance of Mr.Partha Sarthy, Mehar Singh who was fully drunk was not handed over to the Police. All the three witnesses unequivocally stated Mehar Singh to be under the influence of liquor, not in his senses and vaguely replying and his pant was going down.

7. In defence Mehar Singh did not deny accident, however he stated that Mrs.Swapan Manjari Chetal suddenly drove back due to which the front of his car hit her car and he was neither drunk nor negligent in driving. To the evidence of the witnesses that why his clothes were not proper he stated that since he was working for 24 hours his clothes were not in proper place.

8. The reliance of the appellant on the decision in Munna Lal (supra) is misconceived. Since the accident was not reported to the Police, there being no casualty or injury to a human being, no MLC was prepared, however the evidence of the three witnesses who saw him intoxicated, not in proper senses, answering vaguely with his pants down and two bottles smelling of liquor being found in the car, cannot be brushed aside. The present is not a case of no evidence and sufficiency of evidence cannot be gone into by this Court.

9. The second contention of learned counsel for the appellant that insurance claim would not have been given if Mehar Singh was drunk would not be sufficient to grant him the benefit of doubt for the reason in the claim form the management left the column “*whether the driver was under the influence of intoxicating liquor or drugs*” was left blank. The site plan placed on record corroborates the version of the three witnesses which is

further fortified by the fact that the impact of the damage was such that the entire front portion of the N.E. car was damaged and it stopped after moving for a further 100 yards leaving a trail of the fluid leaking from the radiator.

10. We find no reason to interfere in the impugned order. Appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 10, 2015
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