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

\+ FAO 291/2015

M/S T R SAWHNEY MOTORS PVT LTD ..... Appellant
Through: Mr A.K. Mishra, Adv.

versus

RAMVIR & ANR ..... Respondents
Through

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

<u>O R D E R</u>

% **14.09.2015**

<u>CM No. 19258/2015 (Exemption)</u>

1. Allowed subject to just exceptions.

<u>FAO 291/2015 & CM Nos. 19256/2015 (interim directions) & 19257/2015 (condonation of delay of 60 days in filing)</u>

2. This appeal is directed against the order dated 27.03.2015 passed by the Commissioner and authority functioning under the Employees Compensation Act, 1923 (hereinafter referred to as the Commissioner).

3. Briefly, the facts of the case are that the respondents herein are the parents of, one, Mr Rajesh Kumar, who according to them, was working as a machine washer in the appellant company.

3.1 It was the stand of the respondents before the authority below, that their son, Rajesh Kumar, met with an accident on 29.03.2006, at about 11.30 a.m., in the course of his employment with the appellant company. It was also the stand of the respondents that due to injuries sustained by Mr. Rajesh Kumar in his abdomen, he died ultimately in the hospital due to

"Septicaemic Shock to sigmold Volutitus", on 03.04.2006. At the relevant time, the deceased, Mr.Rajesh Kumar was admitted to GTB Hospital, Delhi.

3.2 The respondents, in this behalf, served a legal notice dated 20.10.2006, on the appellant company. It was the case of the respondents, while the management of the appellant company had paid nothing towards the claim, the workmen and staff had contributed a sum of Rs. 51,000/-, in cash, looking at the plight of the respondents.

4. It is in this background, that the respondents had lodged a claim with the Commissioner. The Commissioner, after recording the testimony of witnesses, cited by both parties, came to the conclusion that the injury suffered by Mr.Rajesh Kumar, to which he finally succumbed, had occurred in the course of the employment of the deceased with the appellant company. Before the authority below, the principal defence which was taken by the appellant company was that the deceased, Mr. Rajesh Kumar, was not an employee of the appellant company. The appellant company had cited only one witness i.e., Sh. Rakesh Bhardwaj (RW-1), who at the relevant time was working as the Vice-President with the appellant company.

5. A perusal of the cross-examination of Mr Rakesh Bhardwaj (RW-1) would show that, to most of the questions his response was that he had no knowledge; however, in respect of a suggestion made to him that a contribution in the sum of Rs. 51,000/- had been made by the staff to the family of Mr Rajesh Kumar, he accepted the same even while indicating that he had not made any contribution.

5.1 As a matter of fact, the cross-examination of Mr Rakesh Bhardwaj (RW-1) would show that this fact was adverted to, by him, in paragraph 6 of the affidavit filed by him by way of examination-in-chief. Furthermore, the said witness in response to the suggestion whether the deceased Mr Rajesh Kumar, was an employee of the appellant company stated, that he had no record regarding the absence of the employee. The witness crucially did not state that the deceased was not an employee of the appellant company.

5.2 It is in these circumstances that the trial court came to the conclusion that the deceased was an employee of the appellant company.

5.3 I may also record that the respondents herein had also cited as a witness, one worker by the name of Mr.Narender Kumar, whose cross-examination though could not take place as he had indicated to the Commissioner that he was being threatened by the appellant company.

6. Being aggrieved, the appellant company has preferred the instant appeal. Mr Mishra, who appears for the appellant company, has raised one singular ground to assail the order of the authority below. Mr Mishra's submission is that, there was no material on record to suggest that the death occurred on account of injury adverted to in the claim petition and that the said injury arose, in turn, in the course of employment of Mr.Rajesh Kumar. Mr Mishra, in support of this plea, says, that in this context the delay in lodgement of the claim before the authority below attains significance. It is also Mr. Mishra's assertion that no evidence was placed on record in support of the plea with regard to the injury said to have been suffered by the deceased.

7. I have put to Mr Misra as to whether these submissions were raised before the authority below. Mr Misra, in his usual fairness has conceded that these submissions were not made before the authority below. It is however the learned counsel's say that these submissions, emerge from the

record which is before this court.

7.1 According to me, if this submission is allowed to be raised at this stage, the appellant would, in a sense, take the respondents by surprise. The issues framed by the Commissioner do not, in any manner, suggest that any of the submissions that are sought to be advanced before me were raised either in the form of submission or objections before the authority below.

7.2 The principal defence, as indicated above, taken by the appellant company, was that, the deceased Mr.Rajesh Kumar was not their employee. It is in these circumstances, that the respondents were not called upon to lead evidence with regard to the cause of death. The appellant appears to have accepted the factum of death due to the stated cause/injury. The dispute raised was confined to the factum of the employment of the deceased with the appellant company. A perusal of the impugned judgement is clearly indicative of the fact that this argument was not raised before the authority below.

8. In these circumstances, I do not deem it fit to interfere with the impugned judgement as by now the relevant evidence may not be available to the respondents.

9. I may also indicate that in the filing of the appeal, even according to the appellant, there is a delay of 60 days. An application for condonation of delay has also been filed. The reasons given in the application for condonation of delay are as follows: that after pronouncement of the impugned judgement, on 27.03.2015, a certified copy of the impugned judgement was received in the "first week of April, 2015". It is averred that there was a further delay of three weeks due to the unavailability of the law officer of the appellant company. It is stated that the case was placed for

advice before, the “instructing counsel”, one, Mr N.K. Rathi, in the first week of May, 2015. It is suggested that, pursuant to matter being placed before Mr. N.K. Rathi, discussions took place with the respondent herein and, therefore, no action was taken till July,2015. Furthermore, it is claimed that there was some amount of delay in obtaining the copies of the testimonies of the witnesses.

9.1 The appeal, therefore, on account of the aforesaid reasons could only be filed on 31.08.2015.

10. According to me, the reasons given are less than satisfactory. The reasons given for condoning the delay in the lodgement of appeal are primarily indicative of the fact that there were internal discussions amongst the officers and the counsel of the appellant company. The appellant is a private entity, in fact, a registered company. It had, undoubtedly, the necessary wherewithal to take a decision qua the lodgement of the appeal within the period of limitation prescribed in such like matters. Therefore, I see no reason to condone the delay.

11. Accordingly, not only the captioned application for delay is dismissed, but the appeal is also dismissed on merits.

RAJIV SHAKDHER, J

SEPTEMBER 14, 2015

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