

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.1692 of 1999 and
XOBJ-56-CII-1999.
Date of Decision: 25.05.2016.**

M/s Jindal Electro LimitedAppellant.

VERSUS

Ram MeharRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjeev Gupta, Advocate for
Mr. Shailender Jain, Sr. Advocate for the appellant.

Mr. Tara Chand Dhanwal, Advocate for the respondent.

SNEH PRASHAR, J.

Assailing the order dated 18.05.1999 passed by learned Commissioner under the Workmen's Compensation Act, Hisar (for short, “the Commissioner”) in Case No.29 of 1996 filed by applicant-Ram Mehar (respondent herein) claiming compensation of Rs.6,60,000/- on account of injuries, the appellant-company, filed the instant appeal.

Respondent-Ram Mehar also filed cross objections seeking enhancement of compensation.

In the claim application filed by applicant-Ram Mehar, he stated that he was employee of the appellant-respondent company and on 24.07.1996 in the night at about 3:30 a.m., when he was working in the factory, he met with an accident and suffered injuries and became disabled/lost earning capacity to the extent of 40%, due to the injuries sustained by

In reply to the application, the appellant-company took the stand that the applicant had never worked in its factory and no accident, as alleged by him, had occurred in the factory premises.

On the rival contentions of the parties, learned Commissioner framed issues and accorded opportunity to both the parties to lead evidence in support of their rival contentions. Considering the evidence produced by the parties and the submissions made on their behalf, learned Commissioner allowed the application and awarded compensation to the tune of Rs.72,881.60 to the applicant. The appellant-company was directed to pay the compensation amount within a period of one month from the date of order, failing which the amount was to carry interest at the rate of 12% per annum from the date it fell due upto the date of actual payment.

Aggrieved by the order of learned Commissioner, the appellant-company filed the instant appeal and respondent-Ram Mehar also filed cross objections seeking enhancement of the compensation amount.

The submissions made by Mr. Sanjeev Gupta, learned counsel for the appellant and Mr. Tara Chand Dhanwal, learned counsel for the respondent/cross objector have been heard and record perused.

To begin with, learned counsel for the appellant argued that initially the applicant had served a notice dated 19.08.1996 through his lawyer upon the company M/s Jindal Ispat Limited, Delhi Road, Hisar. In the said notice, he alleged that while working as 'Mould Setter' with the said company, he met with accident and suffered injuries during discharge of his duties. The said notice was produced in evidence by the appellant as Ex.R1.

When in response to the notice M/s Jindal Ispat Limited very clearly stated

that the applicant was not its employee and no accident had taken place in

its factory premises, the applicant got served another legal notice dated 12.09.1996 through his counsel upon the appellant alleging that while in employment of the appellant and during discharge of his duties he suffered the injuries. From the very fact that the appellant was not sure of the name of the company against whom he intended to lodge a claim for compensation proves that he was not an employee of the appellant-company. The second notice to the appellant served by the applicant was result of consultation and manipulation.

Learned counsel further emphatically argued that the appellant-company in its evidence proved the attendant register for the period April, 1995 to October, 1996 (Ex.R2 to Ex.R39), payment of wages register for the period April, 1996 to March, 1997 (Ex.R4 and Ex.R5) and the annual returns filed under the Employees Provident Fund Scheme, 1952 for the years 1996 and 1997 EX.R52 to Ex.R54. From the said documents, which are maintained in regular course of business and are also inspected and verified by government agencies from time to time, it is proved that the applicant was not employed with the appellant-company on or before the alleged date of accident i.e. 24.07.1996. Learned Commissioner assigned no reason to discard the documents produced by the appellant. Moreso, it has come in the statement of AW4 Dr. J.S. Bhatti, Orthopedic Surgeon, General Hospital, Hisar that in the treatment record of the said hospital, the occupation of the applicant had been shown as "agriculturist". From all the said documents, the veracity of which could not be doubted, it stood proved that the applicant had never worked with the appellant and there existed no relationship of 'employer' and 'employee' between them. As such, the

injuries, if any, sustained by him.

On the other hand, learned counsel for the applicant/cross objector argued that although the applicant was working with the appellant-company for the last several years, he was not being named as a 'worker' in the record maintained by the appellant. AW1 Munish Kumar and AW2 Dharambir, whom the appellant admitted to be its workers were also thrown out of service for the reason that they were witnesses to the accident and were supporting the applicant.

The name of the applicant may not be among the names of workers of the appellant-company recorded in the attendance register and payment of wages register etc., but there is sufficient ocular and documentary evidence to prove that the applicant had suffered injuries while working in the factory premises of the appellant at 3:30 p.m. on 24.07.1996. AW1 Munish Kumar and AW2 Dharambir, who were admittedly the workers of the appellant-company on the date of accident, had unequivocally stated that applicant-Ram Mehar was discharging his duties in the factory premises of the appellant when heavy iron moulds fell on his feet and he suffered grievous injuries. They may have left service of the appellant-company before they appeared as witnesses of the applicant but nothing could be produced by the appellant to prove that the said witnesses had any reason to favour the applicant or to be hostile against the company. They were neither related to the applicant nor were to gain anything by deposing in his favour. So there was no reason to disbelieve their deposition. It had come in their statement that the appointment letter and ESI card etc. are issued by the appellant-company only when the worker is

attendance register and payment of wages register, there remain number of other workers employed by the company.

The matter does not end with the oral evidence produced by the applicant. Mark-WC is the bed head ticket of the applicant prepared at General Hospital, Hisar. There is a specific note on the document as under:-

“Referred from N.C. Jindal Hospital, Hisar

Reached at 3 p.m.

Admit.”

At the time of his admission in the General Hospital, medico legal report was prepared. As stated by the applicant and his witnesses, the accident took place on 24.07.1996 at 3:30 a.m. Had the applicant not been working in the factory of the appellant, he would not have been taken to N.C. Jindal Hospital of the appellant. Since the noting on the bed head ticket shows that he had reached the General Hospital at 3 p.m. on 24.07.1996, it stands proved that the applicant remained under treatment at Jindal Hospital since the time of accident till 3 p.m.

Further, the alleged history of the injuries written by the doctor on the bed head ticket 'Mark-WC' is as under:-

“Alleged h/o getting injuries due to falling of some heavy object in the factory”.

The history written by the doctor further clarifies that the applicant had suffered injuries while working in the factory of the appellant. It appears that with an intention to avoid payment of compensation to the applicant, the appellant shifted the applicant in an injured condition from its hospital to General Hospital.

evidence to prove that the applicant was employee of the appellant and he had suffered injuries which resulted in making him disabled during the course of his employment. The finding of learned Commissioner to that effect, calls for no intervention and there being no merit in the appeal filed by the appellant, it is hereby dismissed.

Coming to the cross objections filed by applicant-Ram Mehar, learned Commissioner noticed that the applicant was drawing wages of Rs.1400/- per month and was 26 years old at the time of accident. Calculating the compensation as per formula laid down under The Workmen's Compensation Act, 1923, the compensation payable to the applicant was worked out as Rs.72,881.60. Learned counsel for the applicant-cross objector could point out no infirmity in the calculation of learned Commissioner. No submission was made to explain the ground on which the compensation could be enhanced. Accordingly, there being no merit in the cross objections filed by applicant-Ram Mehar, same are also dismissed.

(SNEH PRASHAR)
JUDGE

25.05.2016.
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