

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

225

FAO No.1020 of 2014 (O&M)
Date of Decision: May 03, 2016

M/s Knight Construction Co. Pvt. Ltd., Faridabad and another
...Appellants
Versus
Sh. Mahavir Prashad Goel
...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kunal Dawar, Advocate
for the applicants-appellants.

Mr. Rohit Ahuja, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.3341-CII of 2014

Prayer in this application is for exemption from filing certified copy of Annexure A-1 and for placing on record photocopy of Annexure A-1.

Application is allowed.

Exemption from filing the certified copy of Annexure A-1 is granted and the photocopy of the same is taken on record subject to just exceptions.

CM No.3342-CII of 2014

Prayer in this application is for exemption from deposit of the amount required under Section 30 of the Workmen's Compensation Act, 1923.

The said application has been rendered infructuous in the light of the order dated 29.10.2014, whereby the counsel for the respondent had

confirmed that the amount has been deposited.

The application is, therefore, disposed of as infructuous.

FAO No.1020 of 2014

Challenge in this appeal is to the award dated 26.08.2013, whereby the claim petition preferred by the respondent has been accepted granting him compensation along with 40% penalty of the awarded amount of compensation along with interest at the rate of 12% per annum from the date of order till its realisation.

2. It is the contention of learned counsel for the appellants that the impugned award cannot sustain in the light of the fact that the respondent was the Supervisor and it was his responsibility to wear a helmet himself and also to see to it that the other workers in the factory also wore the helmet. He himself was negligent and, therefore, the liability, as has been imposed upon the appellants, cannot be said to be in accordance with law. His further contention is that the penalty, as has been imposed by the Commissioner by the impugned award, cannot be sustained in the light of the provisions as contained in proviso to Section 4A of the Employees' Compensation Act, 1923, according to which reasonable opportunity had to be given to the appellants to show cause as to why penalty should not be imposed upon it which aspect has been totally ignored by the Commissioner. He, thus, contends that the present appeal may be allowed by setting aside the impugned award.

3. On the other hand, counsel for the respondent submits that the assertion of the counsel for the appellants cannot be accepted.

The respondent was performing his duties with due diligence and it was

negligence on the part of the employer which has resulted in the accident. As a matter of fact, no sufficient helmets were provided by the appellants which could be used by all the workmen at the site as no evidence has been led to this effect and, therefore, there being inadequate number of helmets, the respondent cannot be blamed for the same. As regards the contention of the counsel for the appellants that reasonable opportunity was not given to the appellants while imposing penalty, counsel submits that the same is not required as the appellants were already present before the Commissioner represented by a counsel and no evidence was led in support of this contention that the appellants were not liable to pay any penalty, in fact, no evidence was led by the appellants despite various opportunities having been granted and, therefore, the awarded amount being in accordance with law, do not call for any interference.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned award.

5. As regards the first contention of learned counsel for the appellants with regard to the contributory negligence on the part of the respondent, suffice it to say that had there been sufficient number of helmets provided by the appellants, the accident which has occurred, could have been avoided. On the appellants having failed to perform their part of responsibility, the liability cannot be shifted to the respondent by asserting that it was his responsibility. The responsibility could have been fulfilled by him provided the adequate equipment was supplied which was not done as there is no evidence in support of this contention. The findings, thus, with

regard to the compensation as well as medical expenses as assessed qua the respondent, cannot be said to be illegal or unjustified or based upon no evidence.

6. As regards the contention of learned counsel for the appellants that no reasonable opportunity has been granted to the appellants to show cause as to why the penalty should not be imposed in the light of the proviso to Section 4A of the Employees' Compensation Act, 1923, the said assertion is correct as after fixing the liability so far as the compensation amount and the medical expenses are concerned, no further opportunity was given to the appellants to show cause as to why penalty should not be imposed upon it. The contention of learned counsel for the respondent cannot be accepted that there was already notice to the appellants as the counsel was already present for the appellants in the light of the fact that no specific issue was framed by the Commissioner while passing the impugned award qua the penalty. The plea, therefore, of the counsel for the respondent, is rejected.

7. In view of the above, the present appeal is partly allowed by setting aside the award qua the fixation of the liability of penalty as imposed to the extent of 40% of the awarded amount of compensation.

8. The parties to appear before the Commissioner under the Workmen's Compensation Act, 1923, Circle-4, Faridabad, on 26.05.2016, who shall frame an issue with regard to the imposition of penalty and then proceed to decide the matter in accordance with law in this regard.

9. Award to the extent of grant of compensation as also the medical expenses along with interest is upheld. The said awarded amount as

upheld by this Court and deposited by the appellants may be disbursed to the respondent.

10. In the light of the disposal of the appeal, the application for stay i.e. CM No.3343-CII of 2014, stands disposed of as infructuous.

May 03, 2016

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**