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

+ **FAO 369/2016**

M/S SANGAM COURIERS PVT LTD. Appellant

Through: Mr. Amit Kumar Pandey,
Advocate

versus

SHOBHA DEVI & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **08.08.2016**

C.M.No. 28519/2016 (u/S 5 of The Limitation Act r/w Sec. 151 CPC)

For the reasons stated in paragraph No. 3 of the application, it is allowed and delay of four days in filing the accompanying appeal is condoned.

Application is disposed of.

FAO 369/2016 & C.M.No. 28518/2016 (for stay)

Appellant is the employer, who challenges the impugned order of 30th March, 2016, vide which respondent-claimant has been awarded compensation of ₹4,69,640/- with interest on account of death of a courier man, aged about 57 years. Impugned order takes the last drawn salary of the deceased courier man to be ₹4,000/- p.m. only.

The challenge to the impugned order by learned counsel for appellant is on the ground that the deceased courier man was not an

employee of appellant and was working on contract basis and was being paid daily for the parcels which he used to deliver to the various branches of the respondent-bank. Attention of this Court is drawn to paragraph No.-6 of the impugned order to point out that the inference of relationship of employer-employee has been drawn by the learned Commissioner while relying upon an admission of appellant volunteering to pay compensation of ₹1,00,000/- only. It is contended by learned counsel for appellant that the so called admission of appellant's Director has been read out of context, as the said offer to pay compensation was made on humanitarian ground and not because the relationship of employer-employee was admitted.

Lastly, it was submitted that there is no documentary proof of any employment nor any parcel was entrusted to the deceased courier man on the fateful day for delivery and so, it cannot be said that the fatal accident took place during the course of employment. In support of his submissions, learned counsel for appellant placed on record a copy of evidence of appellant's Director to show that it was specifically asserted that no consignment was given to the deceased courier man for delivery on the day of the accident and so, it is clear that the accident did not take place during the course of employment. Thus, setting aside of the impugned order is sought.

After having heard learned counsel for the appellant at length and on perusal of the copy of deposition placed on record by him as well as the material on record, I find that judicial notice needs to be taken of the fact that private concerns do not issue any employment letters to the employees who work at low positions like the instant case of a courier

man, particularly when the employment is on contractual basis and the wages are paid on daily basis. In such a situation, it is incumbent upon the employer to produce the record i.e. the registers etc. where it is recorded that during the course of business, as to how many parcels were entrusted to a particular courier man. Had the appellant-employer produced the records, then it would have certainly shown as to whether any parcel was entrusted to the deceased courier man on the fateful day. An adverse inference is drawn against appellant-employer for not producing the records. So, it is not right to say that inference of employer-employee relationship is drawn merely on the basis of admission of appellant to pay the compensation of ₹1,00,000/- voluntarily. Due to default of appellant in not producing the records, the inference of employer-employee relationship can be reasonably drawn.

In the aforesaid view of the matter, grant of compensation to the respondent-claimant is amply justified and even the awarded compensation does not seem to be unreasonable. Thus, finding no substance in this appeal, it is dismissed. Application for stay is dismissed as infructuous.

(SUNIL GAUR)
JUDGE

AUGUST 08, 2016
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