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

Date of Decision: August 22, 2016

+ **FAO 402/2016**

DINESH VERMA

..... Appellant

Through: **Mr. Vijay Kasana and Mr. Rajat
Duhan, Advocates**

versus

MUKESH KUMAR & ANR

..... Respondents

Through: **Nemo**

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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C.M.No.30332/2016 (Exemption)

Allowed subject to all just exceptions.

FAO 402/2016 & C.M.No.30331/2016 (Stay)

In proceedings under *the Employees Compensation Act, 1923*, vide impugned order of 26th May, 2016, compensation of ₹62,000/- with interest has been granted to respondent-claimant on account of fracture of the left leg. The challenge to the impugned order in this appeal by learned counsel for appellant is on the ground that the relationship of employer-employee is not established and so, appellant is not liable to pay the compensation awarded. To submit so, attention of this Court is drawn to the deposition of respondent-complainant to show that the respondent

was working under *Jai Kishan*, who is respondent No.2 in this appeal. It is pointed out that appellant in his appeal has categorically stated that he does not know respondent No.2-*Jai Kishan*. Thus, it is submitted that the liability to pay the compensation is of respondent No.2-*Jai Kishan* and not of appellant and, so impugned order holding appellant and respondent No.2-*Jai Kishan* jointly and severally liable is unsustainable in law.

Upon hearing and on perusal of the impugned order and the material on record, I find that no doubt respondent-claimant has stated in the evidence that he was working under respondent No.2, but I find that the cross-examination of respondent-claimant cannot be read out of context as in the Chief Examination, respondent-claimant has unequivocally deposed as under: -

“That I on 08-06-2010 in the morning at 9:45 am was from the godown of M/s. Dinesh Gas Service was taking the gas cylinder loaded along with Shri Jai Kishan Mehta in the vehicle No.DL1 LD 2008 on the tempo three wheeler and was taking the same to M/s. J.K. Om Sai and the Tempo was driven by Shri Jai Kishan Mehta.”

Aforesaid deposition of respondent-claimant remains unchallenged in cross-examination. In this view of the matter, ignorance of appellant about the respondent-*Jai Kishan Mehta* is of no avail. It is so said because it has come in the cross-examination of respondent-claimant that he does not remember the name of the owner of the vehicle, who delivered the gas cylinder. It has come in the evidence of appellant that his service station has 25 employees.

During the course of hearing, it was not shown that the name of respondent- *Jai Kishan Mehta* does not figure in the record maintained by the appellant or that the vehicle in question was not being plied by respondent- *Jai Kishan Mehta* during the course of his employment.

In such a situation, I do not find any infirmity in the impugned order. Hence, this appeal and the application are dismissed.

(SUNIL GAUR)
JUDGE

AUGUST 22, 2016

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