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

Date of Decision: August 17, 2016

+ **FAO 396/2016**
RAVINDER

..... Appellant

Through: Mr. Sarvesh Bisaria and Mr.
Prakash Chandra Sharma,
Advocates

versus

AMAR SINGH

..... Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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C.M.No.29841/2016 (Delay)

There is delay of 66 days in filing the accompanying appeal.

For the reasons stated in the application, it is allowed and the delay of 66 days stands condoned.

The application stands disposed of.

FAO 396/2016 & C.Ms.No.29839-40/2016

In proceedings under *the Employee's Compensation Act, 1923*, appellant has been burdened with liability to pay compensation of ₹1,98,901/- with interest by holding appellant to be the employer and the compensation awarded to the respondent-injured is on account of sustaining injuries while operating the welding machine and as per the

disability certificate, the disability suffered is of 20% on account of chopping of two fingers i.e. little finger and ring finger of the left hand. While taking the income of the injured at the minimum wages, the compensation has been worked out by the Commissioner under *the Employee's Compensation Act, 1923*.

The challenge to the impugned order in this appeal is on the ground that there was no relationship of employer-employee between the appellant and respondent-injured as appellant had closed the welding machine shop two years prior to the alleged accident.

Learned counsel for appellant submits that appellant is working with a property dealer after closure of the welding shop and there is no document on record to show that any such relationship existed between the appellant and the respondent-injured. It is also submitted that the attendance card does not bear the name of appellant's shop or of the appellant nor does it bear the signatures of the appellant and, so it is of no value and the impugned order erroneously holds appellant to be the employer of the respondent-injured and, so impugned order deserves to be set aside. Nothing else is urged on behalf of appellant.

Upon hearing and on perusal of impugned order and the material on record, this Court finds that primary responsibility to prove the employment is certainly on the claimant, but this by itself does not absolve appellant-employer from showing that the deceased or the injured was not under the employment of the appellant-employer. Such a view is being taken because in cases like the instant one, documentary evidence of employment is hard to find and, so attending circumstances have to be considered.

It is true that no implicit reliance can be placed upon attendance card to show that the respondent-injured was under employment of appellant, but it has to be seen as to whether respondent-injured was cross-examined on the attendance card or not. A bare perusal of the deposition of the respondent-injured reveals that reliance placed by respondent upon attendance card (Ex.CW-1/D) remains unchallenged in cross-examination. Mere suggestion denying the relationship of employer-employee by itself is not enough. A bare perusal of Annexure-6 reveals that although appellant had tendered evidence by way of affidavit, but it is evident from the order of 8th December, 2015 (Annexure-7) that appellant did not want to be cross-examined and, so it was rightly directed by the learned Commissioner that appellant's affidavit will not be read in evidence.

It is the case of appellant that he was having a shop of welding machine, but according to him, it was closed two years ago and appellant claims that thereafter he was working with a property dealer-*Kali Ram*. Since there is lack of evidence on behalf of appellant, therefore, afore-noted assertion made by appellant in his affidavit cannot be considered. The stand taken by appellant in this appeal remains unsubstantiated and, so the impugned order cannot be faulted. The compensation assessed appears to be reasonable and not disproportionate. Hence, this appeal and the applications are dismissed being bereft of merit.

(SUNIL GAUR)
JUDGE

AUGUST 17, 2016

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