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

Date of Decision: August 23, 2016

+ **FAO 412/2015 & C.M.No.28857/2015**

RAJU PROPRIETOR @ RAJESH CHUGH Appellant

Through: Mr. R.K. Uppal and Ms. Tina,
Advocates

versus

ONKAR NATH Respondent

Through: Mr. S.K. Kamat, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant is the employer, who has been directed to pay the compensation of ₹4,74,155/- with interest by the Commissioner under *the Employee's Compensation Act, 1923*. Vide impugned order of 19th June, 2015 respondent-claimant had suffered grievous injuries at the place of his employment on 10th January, 2012 due to sudden fall of iron net which resulted in fall of respondent-claimant from first floor to ground floor. The permanent disability suffered by respondent-claimant has been assessed to be 66%.

To assail the impugned order, it is submitted by learned counsel for the appellant that the respondent-claimant was not on duty on the alleged

day of the accident i.e. 10th January, 2012. It is next contended on behalf of the appellant that claim petition was time barred as it has been filed after two years of the accident. It is pointed out that the claim petition was filed on 7th July, 2014 whereas the accident took place on 10th January, 2012. It is pointed out that the discharge summary Ex. WW1/7 clearly shows that the date of admission is 15th January, 2012 and date of discharge is 22nd January, 2012 whereas as per the claim petition of respondent, he was discharged from the hospital on 12th January, 2012 after getting fitness and 66% permanent disability declared by the hospital.

Finally, it is submitted that the aforesaid infirmity goes to the root of the matter and vitiates the impugned order. Nothing else is urged on behalf of the appellant.

Learned counsel for respondent supports the impugned order and submits that appellant had not led any evidence before the learned Commissioner nor had produced the Attendance Register to substantiate the plea of respondent-claimant being not on duty on the day of the accident and so, no fault can be found with the impugned order.

Upon hearing both the sides and on perusal of the trial court record, I find that respondent-claimant has withstood the test of cross-examination and mere suggestion to the respondent-claimant that he was not on duty is not sufficient and that the appellant ought to have produced the employment record to show that respondent-claimant was not on duty.

The drafting of claim petitions cannot be equated with drafting of plaint and so, stray incorrect averment in the claim petition cannot and

does not justify throwing out a claim petition as documentary evidence i.e. disability certificate clearly shows that it was issued on 26th September, 2013. Thus, the loosely worded averment made in the claim petition of discharge from the hospital on 12th January, 2012 after obtaining disability certificate is not of any consequence. It is being so said because the discharge summary certificate (Ex.WW1/7) clearly shows that the date of admission in the hospital was 15th January, 2012 and date of discharge was 22nd January, 2012. In the face of documentary evidence, the loosely worded averment made in the claim petition cannot be blown out of proportion.

The claim petition cannot be said to be time barred as the limitation to file a claim petition as per Section 10 of *the Employee's Compensation Act, 1923* is two years and the cause of action to file the claim petition arises from the date of issuance of the disability certificate in injury case. In the instant case, the disability certificate was issued on 26th September, 2013 and the claim petition has been filed on 7th July, 2014. So, it cannot be said that the claim petition is barred by time.

The quantum of compensation awarded to appellant does not appear to be disproportionate and is infact quite reasonable. The identity card (Ex.WW1/9) issued by appellant to respondent-complainant clearly shows that respondent-complainant was in employment with appellant's firm. In a case like instant one, the burden to prove that an employee was on duty is not squarely on the claimant and it shifts to the employer as the documentary record regarding attendance or employment ought to be in possession of appellant, which has not been produced and so, on this account, adverse inference is drawn against the appellant.

In view of the aforesaid, this Court finds no infirmity in the impugned order and so, this appeal and the application are accordingly dismissed.

(SUNIL GAUR)
JUDGE

AUGUST 23, 2016

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