

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

CWP No.11818 of 1999

Date of decision: 5 .07.2017

Avtar Singh

...Petitioner

Versus

Commissioner under the Workmen Compensation Act and Assistant
Labour Commissioner, Patiala and others

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr.R.L.Batta, Sr. Advocate with
Mr.Nikhil Batta, Advocate for the petitioner

Mr.Aman Kashyap, Advocate for respondents no.2 & 3.

RAJIV NARAIN RAINA, J

1. Late Shanker was the son of Shri Algu and Smt. Lalti. Shanker who used to work for Charan Singh and Avtar Singh, the land owners in their agricultural fields. Shanker was aged 17 years at the time of incident. While spraying medicines in their fields, Shanker fell unconscious. He died on his way to Civil Hospital, Samrala on the same day i.e. 8th August, 1994. Shanker used to bring home Rs.1000/- every month for the family till. The death occurred during and in the course of employment. The land owners did not compensate the parents of the deceased. A DDR was lodged with the police regarding the death. The couple had two daughters, namely, Kosli, and Meera and a minor son, Vinod, who were then aged about 16 years, 14 years and 10 years, respectively. Charan Singh and Avtar Singh were joint owners of the

agricultural fields and paid Shanker for services rendered. The parents of the deceased asked for compensation when they were refused by the land owners. The mother and father brought an action at Patiala before the Commissioner under the Workmen's Compensation Act, 1923 (for short the "Act" and "Commissioner").

2. From the claimants'side, Santokh Singh son of Inder Singh, resident of Village Jattana Niwan, Tehsil Khamano testified that he knew Avtar Singh and Charan Singh and deposed that Shanker son of Algu was employed with the defendants on the fateful day. He died whilst spraying medicine in the field. He supported the case of the claimants. Avtar Singh and Charan Singh were *ex parte* before the Commissioner despite service by order dated 9th April, 1997. The Commissioner allowed the application and awarded the compensation as per Section 4 of the Act by assessing Rs.90,996/- applying the formula $1000 \times 40 \times 227.49$ divided by 100, as per schedule. The amount of compensation from death till payment was allowed to earn interest @ 12% per annum. The Commissioner apportioned the money and awarded Rs.10,000/- each to be deposited in the fixed account in the name of the minor sisters and brother of the deceased and the rest of Rs.60,996/- to be paid equally to the father and mother.

3. Faced with an *ex parte* award, one of the respondents, namely, Avtar Singh has filed this petition without impleading Charan Singh as proforma respondent and made a request for setting aside the *ex parte* order praying for interim stay of implementation of recovery. It was pleaded in the application dated 16th July, 1999 (Annex. P-4) for setting aside the *ex parte* order before the Commissioner that no notice was sent

to them. The exact words in paragraphs 2 to 5 of the application read thus:-

“2.That no notice was sent to us as received by me for appearing on above said dates.

3.That there was no intention to avoid our appearance by us.

4.That the ex parte order was passed against us without our knowledge.

5.That we have come to know about the said order only when a notice of recovery of the amount in award has been sent to us.”

4. This has led to passing of the second impugned order on 21st July, 1999. The application has been dismissed. The Commissioner noticed that the case was taken up on 27th January, 1997 at Ludhiana when Shri V.K.Gupta, Advocate appeared for respondents no.1 and 2 and during the proceedings, it was prayed that jurisdiction of the case lies with the Commissioner for Workmen’s Compensation, Patiala/Fatehgarh Sahib district and the parties were informed to appear before the appropriate authority on 3rd March, 1997. The order was passed in the presence of the counsel duly appointed by the respondents. On 3rd March, 1997, none appeared for the parties. The case was taken up on 9th April, 1997 when the counsel for claimant was present, but none appeared for respondents and thus the *ex parte* proceedings were initiated. In the light of these facts, the Commissioner was of the opinion that the respondents

were trying to scuttle the recovery process with an intention to avoid the liability. Besides, the application for setting aside the ex parte award was filed without any affidavit in support and that too after a gap of about 1 ½ years from the date of the award. On these premises, the application was dismissed vide order dated 21st July, 1999 (Annex. P-5) passed by the Commissioner at Patiala.

5. The moot issue raised by Mr.R.L.Batta, learned Sr. Counsel for the petitioner in challenge to the impugned order is that there was no proper service since service was not effected personally on the petitioner as required under Order V Rule 16 of the CPC which provision is applicable to proceedings under the Act. It was incumbent upon the Commissioner to serve the petitioner. Learned Sr. counsel refers to the order dated 9th April, 1997 from which he submits that it is clear that no service was effected on the petitioner personally through registered post as required by law. He further argued that Avtar Singh is owner of his own land while Charan Singh is owner of his land. Both of them cultivated their lands separately. He next argued that FIR was lodged by Charan Singh, non-petitioner at the time of death at Police Station, Samrala which shows that Shanker was an employee of Charan Singh and not Avtar Singh. In these circumstances, the present petitioner has nothing to do with the liability. It was not necessary to file an affidavit in support of the application. Avtar Singh admitted that his lawyer at Ludhiana informed him that summons will be received at Patiala and on this, he kept waiting for summons which never came and he came to know about the proceedings only on receipt of recovery notice.

6. Undisputed position is that Shri V.K.Gupta, Advocate was counsel for both Charan Singh and the present petitioner Avtar Singh. Counsel had appeared before the Commissioner at Ludhiana. However, the case was transferred to the Commissioner at Patiala on account of jurisdiction. They may not have been present personally at Ludhiana, but their counsel was and he owed a duty to inform them when the next date at Patiala was given by the Commissioner at Ludhiana in the order. I have read the order dated 27st January, 1997 on which date the case was taken up for service. The case was transferred as the place of occurrence as it fell in the newly created district of Fatehgarh Sahib to which jurisdiction the designated court was at Patiala. The next date i.e. 3rd March, 1997 is duly recorded in the order while remitting the case to the appropriate authority at Patiala. If duly appointed counsel had noticed the date and had knowledge of it, then the Commissioner did not act illegally or in arbitrary fashion in dismissing the application for setting aside the *ex parte* award. There is no merit in the submission of the petitioner that he remained ignorant of the proceedings at Patiala from 3rd March, 1997 till 24th December, 1997 when the award was passed, and thereafter till the application was presented after 1 ½ years in the year 1999 for setting aside the order proceeding *ex parte*. Then it is the fault of the petitioner when he failed to act with prudence.

7. The Commissioner may not be incorrect in reasoning that the petitioner was avoiding liability by staying away from the proceedings. It is the contention of Mr.Batta, that it was incumbent upon the Commissioner at Patiala to serve the petitioner by registered post. I have no doubt that this would have been best thing to have done, but the

question is whether it is fatal to the award. If the petitioner was not represented through counsel at Ludhiana, then the argument of Mr.Batta would deserve to be accepted. However, the counsel appeared and the Commissioner transferred the case in his presence by giving next date in the transferred court, then it is the duty of the parties to cause appearance in the court where the case was transferred. Avtar Singh cannot wriggle out of this fact. If the counsel did not inform him of the next date and the proceedings leading to transfer of the case to Patiala, then he was free to take whatever action he wished against the counsel.

8. The contention that personal service was not effected on the petitioner is not correct statement on file. The Commissioner at Patiala sent registered notice vide order passed on 9th April, 1997 which reads as under:-

“From the claimant side, Shri L.C.Vector is present. Both the defendants were posted registered letters, out of which the registered letter of defendant no.1 has been received back and that of defendant no.2 has not been received back. It is presumed that inspite of its delivery, the defendant has failed to appear. Ex-parte case may be brought against him. Defendant no.1 may again be summoned.

Next date of hearing is 14.5.1997.”

9. Per contra, Mr.Aman Kashyap, learned counsel for respondents no.2 and 3 argued that presumption as to service of registered letter is governed by the provisions of Section 114 (f) of the

Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897 when it is sent at the correct address. There is presumption that the addressee has received the letter sent by registered post. That apart, provisions of Section 14 of the Indian Post Office Act, 1898 and Section 16 of the Evidence Act would also come into play.

10. If registered letters were posted, there was presumption of service. It is not the case of the petitioner that the registered letter was sent to the wrong address. Therefore, there was nothing wrong in the *ex parte* order passed by the Commissioner against the defendant. This aspect regarding service of registered post and the consequential presumption under the law carries weight.

11. There is another reason why I would hold against the petitioner is that Section 3 of the Act fastens liability of payment of compensation on the employer if personal injury is caused to a worker by accident arising out of or in course of employment and in that event, his employer shall be liable to pay compensation to the worker under the provisions of Chapter II of the Act. It was then the duty of the petitioner to pay the amount of compensation as per the formula adopted in the Act because his liability runs across till the present date, and therefore, the contention though appears attractive cannot be accepted as on the facts established on file, a substantial question of law is not involved in this petition. Moreover, remedy of appeal is provided under Section 13 of the Act against the orders passed by the Commissioner. Had an appeal been filed, they would have been pre-requisites arising under Section 30 (2) of the Act. There are two parts on maintainability. One is an appeal against the impugned order under Section 30 of the Act and on the other hand,

against the order dismissing the application for setting aside the ex-parte order, a writ may lie. The prayer in this petition is for setting aside award dated 24th December, 1997 (Annex. P-3) and the order dated 21st July, 1999 (Annex. P-5) rejecting the application for setting aside ex-parte award. I have no reason to interfere with the impugned award and the order and would dismiss this writ petition by also treating this writ as an appeal under Section 30 of the Act by upholding the impugned award by keeping aside all the technicalities of law. If substantial justice has been done by the Commissioner, then interference is not warranted on maintainability.

12. I have considered the arguments based on the agreement/compromise dated 11th August, 1994 (Annex. P-6) as well. The parents of the deceased are alleged to have accepted Rs.700/- from Charan Singh and admitted waiver of an amount of Rs.2200/- already paid to the deceased during his lifetime and money sent to his home address in District West Champaran, Bihar and further that the parents would make no complaint in any department on account of death of their son which occurred suddenly due to negligence and that if he initiates any proceedings those shall be invalid and illegal. I am afraid the agreement has no value in the eyes of law because it is not registered under Section 28 (2) of the Act which provides that agreement of payment of compensation shall be enforceable only when it is registered under sub section (1) of Section 28 of the Act.

13. There is yet another reason to discard the compromise since under Section 17 of the Act, it is prescribed that any contract or agreement whether made before or after the commencement of the Act,

whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under the Act. The same goes for the family of the deceased workman. Viewed from all these angles, judicial scrutiny of the award/order will lean in favour of the respondents and against the petitioner.

14. For the variety of reasons recorded above, I find no substantial question of law involved in this petition which is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

5 .7.2017

MFK

Whether Speaking/reasoned

Yes

Whether Reportable

Yes