

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

208

FAO-2316 of 2012 (O&M)

Decided on : 01.03.2017

M/s Verma Engineering & Shivalik Inc., and another

... Appellants

Versus

Tulsi Ram

.. Respondents

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present : Mr.Vaibhav Prashar, Advocate
for the appellants.
Mr.Deepak Sonak, Advocate for
Mr.Ajaivir Singh, Advocate for the respondent.

G.S.Sandhawalia, J. (Oral)

CM No.10074 CII of 2012

The application for condonation of delay of 92 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by an affidavit.

CM No.10075 CII of 2012

The application for condonation of delay of 84 days in re-filing the appeal is allowed, in view of the averments made in the application, duly supported by an affidavit.

FAO-2316 of 2012

The present appeal has been preferred by the employer against the order dated 26.04.2011, of the Commissioner, Circle III, Faridabad, whereby a sum of Rs.3,31,222/-, was awarded as compensation, along with interest @ 9% from 10.08.2008 to respondent No.1. The respondent/employee, stated that he was appointed by the contractor/appellant No.2, namely, Om Parkash, in the factory of M/s

Century NF Casting, Faridabad. Thereafter, the said contractor engaged him on 08.07.2008 with appellant No.1 on monthly wages of Rs.6000/- He was working and hammering some explosive metal and on account of explosion, he suffered serious injury in his left leg and on shoulder and he was taken to Escorts Hospital, Faridabad by his associates where he remained admitted till 19.07.2008. He had suffered 100% disability and thus claimed compensation, interest and penalty under the the Employee's Compensation Act, 1923.

The appellant No.1 alleged that there was no employer by the name of M/s Verma Engineering, only a store existed in the name of Shivalik Inc., and the workman was never appointed by him. Similarly, appellant No.2 took the plea that the workman was not employed but he was called for a day job. There was no question of hammering the bomb like item and no accident had occurred and scrap was being sorted out. The claimant put some water in a kettle for preparing the tea with the help of small gas cylinder and the gas cylinder exploded by his negligence. A sum of Rs.50,000/- was paid to him on first hand as medical charges. Resultantly, the following issues were framed by the Commissioner:-

- (a) Whether the claim application is maintainable in the present form?
- (b) Whether there is a relationship of master and servant between the applicant and the respondents No.1 and 2 both?
- (c) Whether the accident occurred during the course of employment of respondents No.1 and 2?
- (d) Whether the applicant has taken full and final amount as settled before Notary Public and other two witness from Om Parkash respondent No.2?
- (e) Whether the applicant is entitled to the amount of

- compensation? If so, to what effect?
(f) Relief.”

The perusal of the record would go on to show that as per Exhibit AW-1/11, which was issued by the Civil Surgeon, Faridabad, brought on record through Mahinder Singh, Statistical Assistant from the said office. Perusal of the same would go on to show that there was below knee amputation of the left leg and it was mentioned that it was on the basis of blast injury which occurred on 11.07.2008. The disability that was fixed, was 75%, was permanent in nature. The factum of the accident having taken place, also stands admitted by appellant No.2, as much as that Rs.50,000/- was paid at that point of time, to the employee. The benefit of Rs.50,000/- had also been adjusted by the Commissioner by reducing the said amount, accordingly, to Rs.3,31,222/- out of Rs.3,81,222/- assessed.

The argument that there was no relationship of employment as such, which has now sought to be contended by the learned counsel for the appellants, is liable to be rejected on the ground that it was noticed by the Commissioner that Ram Babu who had appeared on behalf of appellant No.1, had stated that he was neither an employer nor the Manger of Verma Engineering, nor he was posted on any post in the said organization, rather he was the employer of Shivalik Inc. In the absence of the authorized person, and in view of the stand itself taken, though the present appeal has been filed through Ram Babu, nothing has been shown by the appellants by producing an authorized person that they had not employed the workman. The Commissioner was thus well justified in

coming to the conclusion that there was a relationship of employer and employee.

The argument raised that issue-wise finding was not recorded, is not liable to be accepted. The Commissioner has discussed the evidence and noticed the documents which have been produced on record by both the parties. The admissions made by the witnesses have been taken into consideration to come to the conclusion that the amount is due on account of the accident arising out of, and in the course of employment. The income was taken as Rs.4000/-, the relevant factor was 211.79 and keeping in view the age was 28 years, the amount has been assessed.

The stand that no explosion had taken place in the premises stands falsified by sufficient material having been brought on record in the form of treatment chart with the Escorts Hospital, Faridabad. As per Exhibit A1/17, the respondent-employee was injured on 11.07.2008 at about 2:30 p.m. at a workshop in Parvatiya Colony, Faridabad, which is the address of appellant No.1. The admission was at 5:35 p.m. on the same day and the said fact has been noticed that amputation was done on 13.07.2008 as per the discharge summary Ex.AW1/2 wherein, it is specifically mentioned that it was a blast injury and there were multiple small wounds in the upper limb and chest.

Resultantly, sufficient material has been brought on record to show that accident occurred as it had been put forth with the claim application. Therefore, the argument raised that the issues had not been dealt with individually, is not liable to be accepted keeping in view the

fact that the Commissioner has exercised its power under the Act. A strict procedure that has to be followed by the civil courts, would not be applicable to the Commissioner especially since the matter has been discussed threadbare. Resultantly, no substantial question of law arises for consideration, and accordingly, the appeal is dismissed.

[G.S.Sandhawalia]
Judge

01.03.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No