

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

**FAO No.1773 of 2013 (O&M)
Decided on : 02.02.2017**

M/s D.K. Stone Crusher

... Appellant

Versus

Manish Kumar

... Respondent

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

Present : Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate for the appellant.

Mr. Surinder Gaur, Advocate for
Mr. Viney Saini, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The present appeal is directed against the order of Commissioner dated 07.02.2013, whereby a sum of ₹55,267/- alongwith interest @ 12% per annum was granted, keeping in view the fact that the respondent had suffered injury and permanent disability to the extent of 10% on account of crushed injuries of fingers of left hand as per disability certificate Ex.P-20.

The argument raised by the counsel for the employer is that there was no relationship as such of an employee and employer and, therefore, the award was not justified in the absence of any such proof.

A perusal of the award in question would go on to show that on 23.12.2009, the claimant's hand had got caught while putting *Bajri* on the conveyor belt while working at the appellant's Stone Crusher and, thereafter, he was taken to hospital and given first aid and remained admitted till 27.12.2009 and one of his finger of the left hand was amputated. He was 20 years old and due to the disablement, a legal notice

was served to claim compensation of ₹5 lakhs. Resultantly, the claim petition was filed, whereby the denial was that no accident had happened in the premises and a false story had been concocted. The claimant himself examined as PW-5 and also examined Dharam Singh as PW-1 and Bhushan Lal as PW-2 to corroborate his version. Rakesh Kumar PW-3 was also examined to prove the medical bills, apart from Dr. Mahavir Goel as PW-4. The legal notice was placed on record as Ex.P21 alongwith the postal receipts, acknowledgement and disability certificate.

The proprietor of the appellant firm appeared as RW-1 and refuted the allegations and placed on record the copy of the reply. The Commissioner has rightly observed that the solitary statement of the respondent even in the absence of any corroboration could not be ignored. An adverse inference was rightly drawn against the employer, as he did not produce the record as to which of workers were working in Crusher at that point of time. It was noticed that he used to pay wages through payment voucher and maintained balance sheet of profit and loss but he could not give the details of turnover.

The employer had discharged their initial onus by stepping into the witness box and given their deposition as to the terms of the employment with the contractor who was working on the stone crusher. The employer could have always produced the wage register and attendance register etc. to dispel the said fact. The non-production of the said record would thus rightly enable the Tribunal to draw a adverse inference against the employer and therefore, the findings which have

thus been recorded by the Commissioner are not perverse in any manner and was rightly drawn against the appellant.

The wages were accordingly taken to ₹3,914/- as minimum wages and relevant factor was applied and compensation was duly assessed at 10% disability, keeping in view the statement of Dr. Mahavir Goel alongwith the expenses which were only given to the tune of ₹2,663/-.

In such circumstances, once the best evidence has been withheld by the employer himself, it is not justified on his account to submit that there was no relationship of employer and employee. No substantial question of law thus arises for entertaining the appeal. Accordingly, the present appeal is dismissed.

FEBRUARY 02, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No