

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

FAO No. 25 of 2017 (O&M)

Date of Decision: 08.09.2017

Manoj Kumar

..... Appellant

Versus

Smt. Nisha and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Inder Pal Goyat, Advocate
for the appellant.

Mr. Pawan Kumar Hooda, Advocate
for respondent Nos. 1 to 3.

JASWANT SINGH, J.

1. This appeal under Section 30 of Employee's Compensation Act, 1923 (for short 'Act'), is filed assailing award dated 09.09.2006 passed by Commissioner awarding an amount of ₹ 13,16,114/- to the respondents on account of death of Sh. Bijender Singh.

2. Mr. I.P. Goyat, Advocate for the appellant primarily contended that deceased Sh. Bijender Singh was not his employee rather he was an independent contractor who used to supply labour to the appellant as a Sub Contractor. The deceased was having current account number 4447002100000840 with Punjab National Bank Sector-10 Davarka, New Delhi in the name of M/s Antil Enterprises, a firm owned by deceased. If the deceased was an employee, there was no need having current account. The pattern of deposit in said account substantiates the fact that he was an independent contractor. An employee earning ₹ 12,000/- per annum cannot

make such deposits. He had raised bills against the appellant which could

not by an employee.

3. Per contra, Mr. Pawan Kumar Hooda, Advocate for the respondent Nos. 1 to 3 remonstrated aforesaid arguments of the appellant. He drew attention of this court towards identity card issued by M/s Neetika Engineering Private Ltd., a company of Mr. Manoj Kumar, he also drew attention of this Court towards statement made by Mr. Manoj Kumar before Government Railway Police Rohtak (GRP). In his statement made before GRP, Mr. Manoj Kumar stated that deceased was working with him. He also stated that deceased had come to Rohtak in connection with erection of sheet at Railway Station, Rohtak. Mrs. Nisha wife of deceased also in her statement before GRP stated that my husband used to work in a private company and Mr. Manoj Kumar is owner of that company, my husband was working at Railway Station, Rohtak in connection with contract obtained by said company.

4. I have considered arguments of both the counsel and scrutinized record of the case. The undisputed facts obtained from the arguments and record are that Brijender Singh died in a train accident on 10.12.2011. The deceased was working for the appellant. The accident took place at Railway Station, Rohtak, Mr. Manoj Kumar-appellant and wife of deceased made statements before GRP, Rohtak during the course of preparation of inquest report under Section 174 of the Cr. P. C. There was a firm namely M/s Antil Enterprises whose proprietor was deceased and said firm was holding a current account with Punjab National Bank, New Delhi.

5. The controversy involved in the present appeal lies in narrow compass. The only question to be decided by this Court is that whether

deceased was a sub contractor of the appellant or he was working with the

appellant as an employee. As per appellant, the deceased was a sub contractor. The appellant has espoused his contention with two bills issued by firm of deceased and current account of his firm. The appellant before Commissioner denied issue of identity card to deceased whereas in the appeal no such ground has been raised. The appellant appeared before GRP and made a statement wherein he categorically admitted that deceased was working with him. This fact has not been controverted either in the grounds of appeal or during the course of arguments. The respondent produced identity card allegedly issued by the appellant. The appellant before Commissioner simply denied issue of said identity card but failed to prove that how said card is not related to their company. The appellant could disprove said identity card by way of producing identity card issued to other employees. There is no such effort on the part of the appellant. Mere denial of issue of identity card cannot be accepted though proceedings before Commissioner were not like proceedings before Trial Court. It was quasi judicial proceeding. The appellant has strenuously relied upon bank statement to prove that deceased was an independent sub-contractor. This Court has gone through bank statement and finds that most of the credit entries relate to the appellant. It means most of time the appellant has issued cheque or directly transferred funds in the account of deceased. The amount credited and thereafter withdrawn by way of ATM is a meager amount and it cannot be believed that said amount could be related to a sub-contractor. The deceased had withdrawn very small amount i.e. ₹ 5,000/- to 15,000/-. The amount was withdrawn from ATM. During the course of hearing, to a pointed query, it was conceded that the deceased or his alleged concern

6. The above facts cumulatively indicate that the appellant was making regular payments to deceased; the appellant had issued identity card to deceased and the appellant accepted before the GRP, Rohtak that deceased was working with him. The deceased was working with the appellant but appellant is trying to deflect from his liability. The appellant cannot wash of his hand and deflect from his liability. The Employees Compensation Act, 1923 is a piece of beneficial legislation. The objection of said Act is to grant financial help to survivors/family members of deceased workers and save them from starvation. In such circumstances, this Court does not find any merit in the present appeal and, therefore, is constrained to dismiss the same. Accordingly, appeal is dismissed and order of Commissioner is upheld.

September 08, 2017
'dk kamra'

(JASWANT SINGH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No