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

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Date of Decision: 25th July, 2017

+ FAO 209/2014 and C.M. Appl. NOs.12373/2014, 12374/2014 & 12376/2014 and Crl. M.A. 3573/2015

THAKUR RISHI PAL SOLANKI & ANR Appellants
Through: Mr. Thakur Rajeev Tyagi, Advocate
versus

SH. SHATRUGHAN Respondent
Through: Mr. L.K. Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the order dated 22nd October, 2013, whereby compensation of Rs.2,12,825/- has been awarded to the respondent.
2. On 28th July, 1999, the appellant was raising construction in property bearing House No.A-84, Gali No.7, Part-I, Mukandpur Colony, Sameypur Badli, Delhi in which the respondent was working as mason. On the appellants' instructions, the respondent went to the top floor of building for plastering work where he suffered electrocution by the high tension wire crossing from the top floor of the appellants' house, which resulted in grievous injuries and resulted in amputation of left arm and four fingers of the left leg as well as severe burn injuries. The respondent filed an application for compensation before the Commissioner, Employees'

Compensation.

3. The appellants contested the respondent's claim on the ground that he never engaged the respondent as a mason for construction work at his place. The appellants even denied any accident having been taken place.

4. The police registered FIR No.557/1999 under Sections 288/336 IPC against the appellants and chargesheet had been filed against the appellant No.1, Mitender Singh. The Commissioner, Employees' Compensation held that the accident dated 28th July, 1999 arose out of and during the course of employment of the respondent with the appellants.

5. Learned counsel for the appellants urged at the time of the hearing that the appellants had employed a contractor who in turn employed the respondent and, therefore, the appellants are not liable. It is further submitted that the respondent is not a workman.

6. Mr. L.K. Tyagi, learned amicus curiae, submits that this plea was not raised by the appellants before the Commissioner, Employees' Compensation. It is further submitted that the appellants have raised a false claim before the Commissioner, Employees' Compensation as well as this Court and the respondent's application under Section 340 Cr.P.C. is already pending before this Court.

7. In the present case, admittedly the construction of building was going on in appellants' house. The police has registered the FIR against appellants in which the chargesheet had been filed. As per the medical disability certificate, the respondent has suffered 90% disability in relation to upper and lower limb.

8. At this stage, learned counsel for the appellant, on instructions from the appellant No.1 present in Court submits that the appellants do not want

to press this appeal.

9. Learned amicus curiae submits that penalty upto 50% of the compensation amount be imposed upon the appellants under Section 4A(3) of the Employees' Compensation Act.

10. Learned counsel for the appellants submits that a lenient view be taken with respect to the penalty.

11. Considering that this case relates to an accident dated 28th July, 1999 and 18 years have passed, penalty of Rs.1 lakh is imposed on the appellants.

12. Appellant No.1, present in Court, undertakes to deposit Rs.50,000/- within four weeks and Rs.50,000/- within four weeks thereafter. The undertaking of appellant No.1 is accepted.

13. The appellants are directed to deposit Rs.50,000/- with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Shatrughan within four weeks and balance Rs.50,000/- within four weeks thereafter.

14. The appeal is disposed of in the above terms.

15. The appellants have deposited Rs.2,12,825/- with the Commissioner, Employees' Compensation on 10th July, 2014. The Commissioner, Employees' Compensation is directed to discharge the FDR and send the amount to UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Shatrughan.

16. List for reporting compliance and disbursement of the amount on 25th August, 2017.

17. The appellant and respondent shall remain present in Court on the next date of hearing.

18. Copy of this judgment be sent to the Commissioner, Employees'

Compensation for compliance.

19. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

JULY 25, 2017

rsk

J.R. MIDHA, J.

