

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

+ **FAO No. 163/2016 & CM Appl. No. 13773/2016**

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6th September, 2017

RAJENDRA SHARMA

..... Appellant

Through: Mr. Amit Jain, Advocate with
appellant in person.

versus

TINKU

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal filed under Section 30 of the Employees Compensation Act, 1923 impugns the judgment of the Employees Compensation Commissioner dated 22.02.2016 by which the Employees Compensation Commissioner has allowed the claim petition filed by the respondent/claimant and awarded an amount of Rs.1,97,459/- along with interest at 12% per annum from the date of the accident being 07.02.2009.

2. The facts of the case pleaded by the respondent/claimant before the Employees Compensation Commissioner were that he was

working with the appellant at the appellant's toy factory since one year prior to the date of accident on 07.02.2009. It was pleaded by the respondent/claimant that on 07.02.2009 at 5:00 p.m. when he was working on the pressure machine in the toy factory of the appellant, four fingers of his left hand got crushed/amputated in the defective pressure machine. The respondent/claimant pleaded that after the accident he was taken to Kavita Nursing Home for treatment by the appellant with the help of other workers of the factory and he was assured by the appellant that all the help will be given to him including medical facility, however, appellant did not adhere to his promise, and therefore, respondent/claimant ultimately filed a police complaint on 27.10.2009 and thereafter filed the subject claim petition.

3. The appellant contested the claim petition and denied that the respondent/claimant was ever employed by the appellant. Appellant also denied that any accident happened on 07.02.2009. Appellant, accordingly, prayed for dismissal of the claim petition.

4. I note that the respondent/claimant has been endeavored to be served in this appeal as per the address given by

respondent/claimant in the claim petition filed before the Employees Compensation Commissioner, however, in spite of repeated endeavors the respondent could not be served in the normal course. The respondent/claimant was ultimately served by publication in the newspaper Statesman.

5. The Employees Compensation Commissioner framed the following issues:-

- “(i) Whether there existed employee – employer relationship between the claimant and respondent?
- (ii) If so, whether the claimant sustained injury during the course and out of his employment under the respondent?
- (iii) If so, to what amount of compensation is to be granted to the claimant for the same?”

6. In support of the claim the respondent/claimant led evidences of two witnesses; one Sh. Jitender and another Sh. Arun Giri and who claimed that they also were employees of the appellant and were present on the date of the accident on 07.02.2009. The Employees Compensation Commissioner accordingly on the basis of the evidence led by the respondent/claimant held as proved the existence of relationship of employer and employee in terms of paras 12 to 14 of the impugned judgment and which paras read as under:-

“12. The claimant in his claim application has submitted that he was working for the last one year with the respondent on salary of Rs.6000/- per month. The machine provided by the respondent for manufacturing of the toys was not in good condition and was defective. There had been every possibility of mis-happening at anytime. In this regard he made a complaint on 27.10.2009 in police station Usman Pur, Delhi vide DD No. 40B dtd. 27.10.2009 for taking appropriate action against the respondent. It has further been stated by the claimant that his age was 16 year at the time of accident. He has also filed his evidence by way of affidavit. Witness Sh. Jitender and Arun Giri have also filed their affidavits as witness on behalf of the claimant. Sh. Arun Giri, witness was cross-examined by the counsel of respondent but nothing adverse was extracted.

13. Witness Sh. Arun Giri, during his cross-examination stated that the claimant Sh. Tinku met with an accident and was taken to Kavita Nursing Home by him alongwith other co-workers. Another witness Sh. Jitender also submitted that he had been working with the respondent at the time of accident of Sh. Tinku. He further submitted that claimant was employed with the respondent in his toys factory for the last more than one year and sustained injury on 07/02/2009 while working on pressure machine, his four fingers of left hand got crushed and amputated in the defective pressure machine. He also stated that at the time of accident, he was present in the factory and alongwith Sh. Arun Giri and other co-workers who took the claimant to the Hospital. Therefore, the contention of the respondent that there existed no employer-employee relationship between the respondent and the claimant at the time of accident is not tenable.

14. In view of the evidence/ submission of above witnesses, I am of the opinion that claimant was employee of the respondent at the time of accident and sustained injury during the course and out of his employment under the respondent, hence, issue No. 1 and II are decided in favour of claimant.”

7. Learned counsel for the appellant has very vehemently argued that the Employees Compensation Commissioner has committed a gross illegality and perversity in holding that there exists a relationship of employer and employee. It is argued on behalf of the appellant that admittedly there is no FIR of the date of the incident and the only police complaint filed by the respondent was after around 8 to

9 months of the date of the alleged incident. It is also further argued on behalf of the appellant that the only medical documents proved by the respondent/claimant being Ex.PW1/2 and Ex. PW1/3 are the documents of Sandeep X-ray & Pathology Lab as also of Kavita Nursing Home, and that both these documents only show a blood report or some tablets being prescribed for the respondent/claimant and these documents do not show that respondent/claimant suffered an accident resulting in amputation of four fingers of his left hand. It is also argued by the learned counsel for the appellant that the document of Kavita Nursing Home prescribing tablets is also not of the alleged date of accident being 07.02.2009 but is of 13.02.2009. Learned counsel for the appellant further argues that appellant has in fact stepped into the witness box and filed as evidence his entire attendance and salary records showing two persons employed as employees being Ex.MW1/1(colly.) and Ex.MW1/2, and therefore, appellant has led all evidence to show that respondent/claimant was never his employee and in fact no accident took place on 07.02.2009.

8. In my opinion, arguments urged on behalf of the appellant raise a substantial question of law in the facts of the present

case, inasmuch as, medical documents filed Ex.PW1/2 and Ex.PW1/3 do not show at all that any accident happened, much-less on 07.02.2009, whereby four fingers of the left hand of the respondent/claimant were amputated. The documents of Kavita Nursing Home Ex. PW1/3 besides being dated 13.02.2009, and not of 07.02.2009 being the date of the accident, this document only prescribes some tablets and this document in no manner shows that the respondent/claimant suffered an accident resulting in amputation of four fingers of his left hand. Also, there is no FIR of the incident and the only complaint of the accident has been filed by the respondent/claimant after around 8 to 9 months of the date of the incident and thus giving the police complaint very little credibility. The two employees, namely Sh. Jitender and Sh. Arun Giri, who alleged themselves to be employees of the appellant, are not the employees of the appellant because the appellant has not concealed employment documents but has rather filed on record his employment and attendance record showing that neither the respondent/claimant nor the two alleged employees Sh. Jitender and Sh. Arun Giri were ever employed by the appellant. In fact, as per the case of the respondent/claimant he was taken to Kavita Nursing Home on the same date on 07.02.2009 but there is no medical document of Kavita Nursing Home of 07.02.2009 and the

only document of Kavita Nursing Home Ex. PW1/3 is dated 13.02.2009, and which document too in any case does not show happening of any accident of crushing of four fingers of the left hand of the respondent/claimant.

9. In my opinion, no doubt, evidence led by a worker is read liberally, however, evidence led cannot be read perversely and to an extent of showing happening of the accident and existence of relationship of employer and employee although all other documents filed in the case suggest that neither the accident happened nor there existed any relationship of employer and employee.

10. In view of above discussion, this first appeal is allowed. The impugned judgment of the Employees Compensation Commissioner dated 22.02.2016 is set aside. Appellant can now seek refund of the compensation which the appellant has deposited in terms of the impugned judgment before the Employees Compensation Commissioner. Appeal is accordingly allowed and disposed of leaving parties to bear their own costs.

SEPTEMBER 06, 2017
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VALMIKI J. MEHTA, J