

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

+ **FAO No. 461/2016 & CM Nos. 34927/2016 & 5936/2017**

% **15th May 2017**

M/S ADECCO INDIA PVT. LTD. Appellant

Through: Mr. M.S.Sharma, Advocate.

versus

SHRIRAM & ANR. Respondents

Through: Mr. Rajat Sharma, Adv. for R-1.
Ms. Upasana Talwar, Adv. for R-2.

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 under Section 30 of the Employee's Compensation Act, 1923 is filed by the employer impugning the judgment of the Employee's Compensation Commissioner dated 17.5.2016 which has allowed the claim petition filed by the respondent no.1 herein/claimant and awarded compensation of Rs. 23,942/- along with interest at 12% per annum.

2. The facts of the case are that the respondent no.1 herein, claimant before the Employee's Compensation Commissioner, filed the claim petition stating that he was the employee of the present

appellant. On 12.10.2009 at around 2:45 PM when the respondent no.1/claimant was going to handover papers from his establishment's office in Okhla to Captain Gaur near Modi Flyover, he met with an accident near Kalkaji Mandir and he was treated at Holy Family Hospital. Respondent no.1/claimant spent Rs.15,000/- for the treatment of fracture in his left leg because of the accident and due to which he pleaded to have suffered 60% disability. It was further pleaded that appellant assured him that compensation will be paid but failed to do so and hence the claim petition was filed.

3. Appellant appeared before the Employee's Compensation Commissioner and disputed the claim of the respondent no.1/claimant. It was pleaded by the appellant that respondent no.1/claimant is covered under the Group Personal Accident Insurance Policy and hence the insurance company should be made to pay for the compensation. Appellant also pleaded that the respondent no.1/claimant had failed to prove the disability. It was also pleaded that the claim was time barred. It was also pleaded that the respondent no.1/claimant was not a workman as he was engaged as an officer vide appointment letter dated 11.2.2008 and that the provision of the Employee's Compensation Act do not apply to the respondent no.1/claimant.

4. Respondent no.2 in these proceedings is the respondent no.1 before the Employee's Compensation Commissioner, and it is neither a necessary nor proper party because as against the respondent no.2 herein, respondent no.1 before the Employee's Compensation Commissioner, the claim petition has been dismissed.

5. The following issues were framed by the Employee's Compensation Commissioner:-

- “i. Whether the claimant is entitled to the claim compensation as an officer for injury caused during in his employment with respondent no.2?
- ii. Whether the claimant was covered under ESIC?
- iii. If yes?
- iv. Any other directions?”

6. Both the parties filed their affidavits by way of evidence and their witnesses were cross-examined.

7. As regards issue no. (i) appellant itself had admitted that appellant had given an employment letter dated 11.2.2008 to the respondent no.1/claimant. It was also admitted that respondent no.1/claimant was paid wages by the appellant. It was also found as a fact that the appellant itself admitted that the respondent no.1/claimant is covered under the Group Personal Accident Insurance Policy and

insurance company would be liable. It was therefore held by the Employee's Compensation Commissioner that there was a relationship of employer and employee between the appellant and the respondent no.1/claimant. In fact, in the cross-examination of the witness of the appellant, it was admitted that the respondent no.1/claimant was appointed on 11.2.2008 and he worked upto 12.10.2009. Accordingly, it has been rightly held that there was a relationship of employer and employee between the appellant and respondent no.1/claimant.

8. The factum of the accident occurring was held to be proved in view of the FIR No. 505/2009 exhibited as Ex.WW1/46 and the AIIMS form with respect to transfer to another hospital was proved as Ex.WW1/9. The respondent no.1/claimant was admitted to Holy Family Hospital on 12.10.2009 and was discharged on 16.10.2009 after being treated for left leg fracture.

9. The Employee's Compensation Commissioner notes that the factum with respect to happening of the accident is not denied and which happened when the respondent no.1/claimant was going to deliver the papers of the appellant/employer company. It was therefore held that accident arose during and out of the course of employment.

10. Accordingly, the Employee's Compensation Commissioner decided issues nos. 3 and 4 by granting compensation as under:-

"ISSUE NO.3 & 4

In view of the findings on issue no.1 and 2 the claimant are entitled for compensation which is calculated as below:-

Age of the claimant as per Ration Card is 58 years which is exhibited as Ex.WW1/49. The wages of the workman are taken as Rs.4,000/- per month as provided under Section-4. Disability is 8% as per disability certificate no.F.14/59/3780/Pt N/MMH/2227 dated 14/12/2012 issued by Pandit Madan Mohan Malvy Hospital New Delhi.

- i) Relevant factor for 58 years of age : 124.70
- ii) 60% of last drawn monthly salary restricted to Rs.2,400/- i.e. maximum limit fixed Under Section 4 of the Act :Rs.2,400/-
- iii) Amount of Compensation ;124.70XRs.2,400/-
- iv) Total compensation amount : **Rs.23,942/-**

5. As per provisions Sub Section (3) of Section 4A of the Act, the amount of compensation should have been paid by the respondents to the claimant of Sh. Shriram within one month from the date of accident 12/10/2009 i.e latest by 11/11/2009 but the respondents have not yet paid the compensation to the claimant. Therefore, the claimant Sh. Shriram are also entitled for interest on the compensation amount @ 12% w.e.f. 12/11/2009 till the realization of compensation amount.

6. The Respondent no.2 is liable to pay the compensation amount along with interest as mentioned above. M/s Adecco Flexione Workforce Solution Ltd., Respondent no.2 is directed to deposit in this court an amount of **Rs.23,942/- (Twenty Three Thousand Nine Hundred Forty Two Only)** on account of compensation payable to the claimant Sh. Shriram alongwith interest @ 12% p.a w.e.f. 12/11/2009 till its realization, through Pay order in favour of "**Commissioner Employee's Compensation-VIII**" within a period of thirty (30) days from the pronouncement of this order for disbursement to the petitioners/claimants."

11. An appeal under Section 30 of the Employee's Compensation Act lies only if there is a substantial question of law. Appraisal of evidence does not result in a substantial question of law once the conclusions of the Employee's Compensation Commissioner

are arrived at on the basis of evidence on record and more particularly the admissions made by the appellant itself. Accordingly, no fault or illegality whatsoever can be found in the impugned judgment, much less that a substantial question of law arises under Section 30 of the Employee's Compensation Act for this appeal to be entertained.

12. Counsel for the appellant argued that the claim petition was time barred, and therefore, should have been dismissed, however, it is noted that though this defence was raised in the written statement, but the appellant did not choose to get any issue framed on the same. Obviously, the appellant is therefore deemed to have abandoned its plea of limitation. In case, the appellant was of the opinion that the Employee's Compensation Commissioner ought to have framed an issue because it was pressing the issue of limitation, then after the issues were framed, appellant should have moved an application for framing of issue with respect to issue of limitation and admittedly this was not done. Therefore, appellant cannot now argue that it had pressed the issue of limitation.

13. The next argument which was raised on behalf of the appellant was that the Employee's Compensation Commissioner who decided the issue did not have requisite qualification for his being appointed as an Employee's Compensation Commissioner under

Section 20 of the Employee's Compensation Act, and once again this argument is to be rejected on the same reasons given for rejecting the first argument of the appellant reproduced above inasmuch as no such issue was got framed by the appellant and the appellant is therefore deemed to have waived this defence. In any case this defence is totally frivolous and not even remotely substantiated. This second contention of the appellant is therefore rejected.

14. Counsel for the appellant finally argued that there existed no relationship of employer and employee and the respondent no.1/claimant was never the employee of the appellant, however, I have already given detailed reasoning above and which shows that Employee's Compensation Commissioner was justified in arriving at a finding that the appellant was the employer of the respondent no.1/claimant especially on account of the admissions made by the appellant itself.

15. No substantial question of law arises. Dismissed.

MAY 15, 2017/ib

VALMIKI J. MEHTA, J