

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

+ **FAO No. 205/2017**

% **2nd May, 2017**

ADESH JAIN & ORS. Appellants

Through: Mr. Sugriva Dubey, Advocate.

versus

TOP SINGH Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No. 16713/2017 (delay)

For the reasons stated in the application, delay in filing the appeal is condoned. CM stands disposed of.

C.M. No. 16714/2017 (exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

FAO No. 205/2017 & CM No. 16712/2017 (stay)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 impugning the judgment of the Employee's Compensation Commissioner allowing the claim petition filed by the respondent herein. Claim petition was filed by the

respondent on account of his suffering injury due to electrocution while working at the site.

2. The facts of the case are that the respondent filed the claim petition pleading that he was an employee of appellant nos. 2 and 3, and who were awarded a contract for doing POP work at the site of the appellant no.1. Respondent pleaded that he was working as a helper for doing POP work of appellant nos. 2 and 3 since 21.7.2015 on wages of Rs.200/- per day. On 25.7.2015 respondent suffered injury due to electrocution while working at the site 641-C, Loni Road, Ram Nagar, Delhi. He was taken to the GTB Hospital by co-workers. Since appellant nos. 2 and 3 failed to pay the compensation in spite of demand notice dated 30.5.2016, the claim petition was hence filed.

3. Appellants no. 1 to 3 were the respondent nos. 1 to 3 in the claim petition filed before the Employee's Compensation Commissioner. Appellant nos. 2 and 3 were the employers of the claimant, respondent herein. It is curious that all the appellants filed a common written statement i.e owner of the site and contractors filed a common written statement. It was denied that there was a relationship of employer and employee between the respondent herein and the appellant nos. 2 and 3. It was also pleaded by the appellants that due to humanitarian grounds appellants nos. 2 and 3 extended help of

Rs.25,000/- to Rs.30,000/- for treatment of the respondent herein.

Accordingly, they prayed for the claim petition to be dismissed.

4. Before the Employee's Compensation Commissioner respondent proved all the documents being the record of the hospital, complaint before the Asst. Labour Commissioner, FIR, Disability Certificate etc etc and which are referred to in para 4 of the impugned judgment and which para reads as under:-

“4. The Claimant Sh. Top Singh has examined himself as witness and he has filed his evidence by way of affidavit (Ex.CW1/A) alongwith documents namely Copy of treatment record of GTB Hospital in original (Ex.CW1/1 Colly 07 pages), Copy of complaint to Police Department alongwith postal receipt (Ex.CW1/2 and CW1/3 to CW1/5) in original, Copy of complaint filed before Asst. Labour Commissioner in original (Ex. CW1/6), Copy of FIR No.0108 dated 19.03.2016 (Ex.CW1/7), Disability Certificate of Claimant in original (Ex.CW1/8) and copy of demand notice dated 30.05.2016 in original alongwith postal receipt (Ex.CW1/9 to CW1/12), Chief examination of the Claimant/CW1 is in the line with the averments made by the Claimant in his Claim Petition.”

5. Respondent/claimant also deposed on oath and supported his claim petition. Respondent/claimant also summoned a witness Sh. Rakesh Kumar, Head Constable to prove the FIR as Ex. CW2/X. Respondent/claimant also summoned Sh. S.K. Gupta, Inspecting Officer, Labour Department, Govt. of NCT of Delhi as CW-3 and who proved the complaint filed by the respondent/claimant before the Labour Department as Ex.CW3/X. CW-2 and CW-3 were not cross-examined by the appellants.

6. In the cross-examination of the appellant no.2 he admitted that he had been awarded a job of POP work at the site of the appellant no.1 and during the period from 21.7.2015 to 25.7.2015, at the site at 641-C Loni Road, Ram Nagar, Delhi labour of appellant no.2 was working. When a specific question was put to the appellant no.2 who deposed as RW2W1 that the respondent/claimant was also working at the site 641-C, the appellant no.2 did not give answer to this question. It was also admitted by the appellant no.2 that he did not maintain any record of payment of wages to his workers and that he had given an amount of Rs.25,000/- to Rs.30,000/- to the respondent/claimant for his treatment. Appellant no.2 also admitted the document Ex.CW3/Y which bears his signatures and which was a document submitted before the Inspecting Officer that the appellant no.2 would settle with the respondent/claimant, though surprisingly, the appellant no.2 contended that though his signatures appeared on the document Ex.CW3/Y, it was claimed that he was not well when he put his signatures and he simply put signatures on whatever was recorded by the Inspecting Officer.

7. An appeal lies under Section 30 of the Employee's Compensation Act only if a substantial question of law arises. Appraisal of evidence does not fall within the realm of substantial question of law. Once as per the evidence led by the parties the

Employee's Compensation Commissioner takes one possible and plausible view, it cannot be argued that because of taking of one possible view, the same results in error in the impugned judgment, and therefore, there arises a substantial question of law.

8. It is seen that it is not disputed that appellant nos. 2 and 3 were working at the site of the appellant no.1 for doing POP work, and had engaged labour for the work. It is also proved in the evidence that respondent/claimant was at the site and had got electrocuted. It is also an admitted position on record that appellant no.2 during his cross-examination kept silent to the specific question that the respondent/claimant was employed by him, and therefore, the Employee's Compensation Commissioner rightly drew an adverse inference against the appellants. To the reasoning of the Employee's Compensation Commissioner I would like to add that under Illustration (h) of Section 114 of the Indian Evidence Act, 1872, if a man refuses to answer a question then it has to be presumed that the answer, if given, would be unfavourable to him. Also, the Employee's Compensation Commissioner has rightly held that if the respondent/claimant was not an employee of the appellants no.2 and 3 then there was no reason why a sum of Rs.25,000/- to Rs.30,000/- would have been paid to the respondent/claimant for his treatment.

Also, there was no reason why the appellant no.2 before the Inspecting Officer would have signed Ex.CW3/Y admitting that he would settle the matter and pay the claim amount to the respondent/claimant.

9. In view of the above discussion, I do not find any error in the impugned judgment. No substantial question of law arises. The appellants/Employee's Compensation Commissioner are hereby directed to pay the compensation amount directly and only to the respondent/claimant. A copy of this judgment be sent to the Employee's Compensation Commissioner for necessary action.

10. Dismissed.

MAY 02, 2017/ib

VALMIKI J. MEHTA, J