

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

+ **FAO No. 323/2017**

% **31st July, 2017**

SANJAY GUPTA Appellant

Through: Mr. Siddharth Arora and Mr.
Lalit Gupta Advs.

versus

AMAR SINGH 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 under Section 30 of the Employees Compensation Act, 1923 is filed by the appellant/employer against the impugned judgment of the Employees Compensation Commissioner dated 21.02.2017 by which the claim petition filed by the respondent/employee has been allowed and he has been granted compensation as per the statutory formula for a sum of Rs.4,99,411/- along with the interest at 12% per annum.

2. The facts of the case are that respondent/claimant pleaded that he was working with the appellant carrying on business as sole

proprietor of M/s Anupam Packers at F-37, Sector-2, DSIIDC Bawana, New Delhi-110039. It was pleaded that respondent/claimant was working as Dye Machine Operator at wages of Rs.7000/- per month. It was further pleaded that respondent/claimant was denied benefits under the applicable legal provisions including minimum wages, ESI, PF, Bonus, Casual Leave etc. It was then pleaded that on 23.07.2012 during the course of employment when the respondent/claimant was working on the Dye Cutting Machine, and which was defective since the last few days, respondent/claimant met with an accident with the machine whereby his hand got crushed in the machine. It was pleaded that the respondent/claimant was taken to Siddharth Hospital at Kanjhawala road at Bawana, Delhi-110039 for his treatment but neither the management nor the doctor informed the police in this regard. The respondent/claimant incurred all the medical expenses and approached the management who had said that dues will be cleared, but instead respondent/claimant was removed from the factory without any notice and without payment of any dues.

3. The appellant who was respondent before the Employees Compensation Commissioner below filed his written statement and

pleaded that he had no concern with the M/s Anupam Packers because appellant was in fact carrying on business in the name of M/s Rishi Aluminium Industries. It was also pleaded that there was no defect in the machine. It was further pleaded that the appellant was acquitted on 27.07.2016 in the case titled State vs. Sanjay Gupta FIR No. 19/13, P.S. Bawana which was filed as per the complaint by Trade Union with respect to the accident in question.

4. The Employees Compensation Commissioner below has held that appellant has admitted in his cross-examination that he was making cardboard boxes. The Employees Compensation Commissioner also notices that the employee of the appellant Sh. Dhan Singh S/o Sh. Amit Chand, first made a statement Ex. RW1/N with respect to the accident but thereafter he turned hostile, but that reason is not enough to hold that compensation should not be awarded to the respondent/claimant under the claim petition inasmuch as appellant did not deny the issue of his ownership of M/s Anupam Packers in his replies dated 05.01.2013 and 03.11.2012 given to the notices of the respondent/claimant and the labour union. The Employees Compensation Commissioner also found as a matter of

fact that the appellant was doing the business of manufacturing of cardboard boxes and which he has not denied in any of his statement. The Employees Compensation Commissioner has also found that as per the document Ex. RW1/B which is a letter of the CA to VATO, M/s Rishi Aluminum Industries had opened an additional place of business w.e.f. 02.04.2010 and additional items of business related to cardboard boxes. The Employees Compensation Commissioner has also held that no benefit can be given to the report given six months after the accident that the machine is working properly. It may be noted that Employees Compensation Commissioner also has arrived at a finding of fact that there is no dispute that the appellant is the owner of F-37, Sector-2, DSIIDC Bawana, New Delhi-110039 where the accident took place. The aforesaid conclusions have been arrived at by the Employees Compensation Commissioner in terms of para 13 to 17 of its judgment and these paras read as under:-

“13. On 05.09.2016 Cross Examination of claimant was conducted and completed by ARR. On the request of claimant P.E. was closed and respondent filed his evidence by way of affidavit. Cross Examination of respondent was conducted and completed by ARC and R.E. was closed. Written arguments were submitted and the case was reserved for order. That in view of the above facts and examination of pleadings/documents, written statement of respondent, evidence of petitioner and hearing of arguments in this case, the issues framed during the proceedings are decided here as below:-

Sh. Sanjay Gupta i.e. respondent has admitted during the cross-examination that he is into the business of making of card board boxes and Dhan Singh was under his employment. As per the Ex. RW1/N i.e. statement of Dhan Singh s/o Amit Chand before Ld. M.M., he used to work at factory no. F-37 Sector-2 DSIIDC Bawana Delhi which dealt with manufacturing of gatta boxes with the name of Rishi Aluminum Industries.

During the police investigation Dhan Singh was a witness to the accident but later on he disowned the same in the court. Respondent has exhibited incomplete documents of case titled as State vs. Sanjay Gupta FIR No. 19/13 neither the police investigation record nor the final order has been submitted.

No court record was exhibited either.

As per the court records the witness Dhan Singh resiled from the earlier statement made by him to the police where he had stated that machine was not working properly and there was neither any safety cover nor were the brakes proper and he was a witness to the accident.

The statement of witness Dhan Singh in the court appears to be an afterthought.

14. The respondent has not raised any objection or denied the issue of ownership of M/s Anupam Packers in his replies dated 05.01.2013 and 03.11.2012 to the claimant and to the labour union, in response to the demand letter whereas claimant has also always adhered to the same name throughout.

The respondent had approached the mediation and conciliation centre for the settlement of dispute on 08.09.2014 and it has also been mentioned in the proceedings by Ld. CEC on 07.12.2015 that matter was adjourned on the grounds that both the parties were negotiating to settle the dispute mutually and needed some time for the same. This goes on to prove link between two parties.

As per the Ex.RW/B which is an undated letter from CA to VATO, it is being informed that the M/s Rishi Aluminum Industries have opened additional place of business and business activities have begun w.e.f. 02.04.2010 and additional item required for the purpose are related to card board boxes only. At the same time, as per Ex.RW1/C, which is provisional factory licence from MCD dated 08.08.2011, the trade mentioned is wire knitting only. It has been mentioned in the rejoinder that the respondent had been running several firms in different names at the same premises.

15. It is well known fact that the owner/employer has the full knowledge of business activities whereas the employee does not have the insight of business but is limited to his work. As per Ex.RW1/C, which is provisional factory licence from MCD dated 08.08.2011, the trade is wire knitting only under the name of M/s Rishi Aluminum Industries whereas it is an admitted fact that Sh. Sanjay Gupta was doing the business of making of card board boxes also. The respondent has never denied the fact that he was running more than one firms in any of his statements. The above facts

indicate that Sh. Sanjay Gupta was running more than one firm within the same premises.

As per Ex.RW1/D and Ex.RW1/E M/s Rishi Aluminum Industries has taken a **New membership from Bawana Print and Pack Association** on 03.01.2013 and in the application form for membership it has been mentioned that nature of business is manufacturing of all kinds of papers, boxes, ferrous and non ferrous metals.

It appears that in order to shrug off his liability the respondent has taken the membership on 03.01.2013 after the registration of police complaint.

16. The claimant suffered injuries on 23.07.2012 as per the discharge slip of the hospital on record. FIR has been registered at the address of F-37, Sector-2, DSIIDC Bawana, New Delhi-110039 on 14.01.2013. Inspector of factories visited the said premises on 24.01.2013 and inspected the machine involved in the accident and found it in working condition. It is worthwhile to note that there was no name of factory mentioned in above sequence of events and there was a gap of six months between the accident and the day of inspection. The inspection report loses its relevance after such a long gap.

17. The respondent has filed a complaint Ex.RW1/M To SHO, PS Bharat Nagar against the complaint for forgery and fabrication of documents i.e attendance card produced before CWC in evidence but on the other hand no record of employees employed in the establishment by the respondent has been produced during the proceedings in the court and has neither filed any complaint against the registration of FIR dated 14.01.2013, alleged to be false in his W.S.

The evidence and facts of the case indicates that Sh.Sanjay Gupta was the owner of the said premises i.e. F-37, Sector-2, DSIIDC Bawana, New Delhi-110039 and the claimant Sh.Amar Singh was his employee and the accident on 23.07.2012 resulting into injury to the workman occurred out of and during the course of the employment with the respondent.”

5. An appeal under Section 30 of the Employees Compensation Act only lies if there is a substantial question of law. Arriving at a conclusion on the basis of evidence which exists on record falls in realm of the jurisdiction of the Employees Compensation Commissioner, and once one possible and plausible view is taken by the Employees Compensation Commissioner, no

substantial question of law arises if that conclusion is not completely illegal and perverse. I do not find any illegality and perversity in the impugned judgment on account of the fact that accident is proved to have happened, appellant has not filed any Income Tax Return or any bank account to show that he has no concern whatsoever with the M/s Anupam Packers, in any case M/s Anupam Packers is only a sole proprietorship concern of Mr. Sanjay Gupta who is appellant herein and who is the owner of the premises i.e F-37, Sector-2 DSIIDC Bawana, New Delhi-110039 where the accident had taken place, and lastly that even M/s Rishi Aluminum Industries of which appellant was admittedly a proprietor had opened an additional business of cardboard boxes.

6. Dismissed.

JULY 31, 2017

mr

VALMIKI J. MEHTA, J