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

DECIDED ON : 19th DECEMBER, 2017

+ **FAO 374/2015, CM 25403/2015 & 6031/2016**

RAJESH SAHNI Appellant

Through : Mr.Yajur Bhalla, Advocate.

versus

LAL BABU RAI & ANR Respondents

Through : Mr.R.K.Nain, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the appellant Rajesh Sahni under Section 30 of the Employee's Compensation Act, 1923 (hereinafter 'the Act') to challenge the legality and correctness of an order dated 13.10.2014 of learned Commissioner whereby compensation of ₹4,45,289/- was awarded to the respondents.

2. I have heard the learned counsel for the parties and have examined the file. Undisputedly, on 12.07.2009 the victim Mantoo Kumar sustained burn injuries due to electrocution; he succumbed to the injuries on 15.07.2009. A case vide FIR No.167/2009 under Section 304A IPC was registered at Police Station Swaroop Nagar.

3. The respondents filed claim petition under Section 22 of the Act on 10.12.2009 for death compensation relief of late Mantoo Kumar. It was averred that Mantoo Kumar was 'employed' with the appellant Rajesh Sahni for the purpose of cleaning water tank on the roof of his house. On 12.07.2009 Mantoo Kumar fell down from the

second floor when he came into contact with the electric line of 11000 volts passing through the roof while cleaning the water tank. The victim was first taken to Babu Jagjivan Ram Hospital and thereafter shifted to the LNJP Hospital where he died on 15.07.2009 after medical treatment. It was urged that the deceased died in an accident arising out of and during the course of employment with the appellant when he was cleaning the water tank.

4. It was further urged that the respondents were dependants of the deceased. The deceased was drawing wages @ ₹5,000/- per month and was aged around 18 years at the time of accident.

5. The claim petition was contested by the appellant. In the written statement, he denied if the victim was employed by him for cleaning the tank. It was averred that there was no employer-employee relationship. The deceased used to work on daily wages for catching fishes from ponds in Haryana; so was the appellant. Both the appellant and the deceased were paid by pond owners directly. It was further urged that on 12.07.2009, the victim had not gone to catch fishes and stayed at his usual place of residence with his cousin at Samaipur Badli. Since the appellant had gone out, the deceased came to his house and climbed the water tank for flying the kite. He came into contact with high tension wire. Appellant's wife took Mantoo Kumar to hospital on humanitarian grounds.

6. To prove its case, the victim's father Lal Babu Rai examined himself as AW-1. The appellant examined himself as RW-1. On perusal of the evidence adduced by both the parties and considering the rival contentions of the parties, the learned

Commissioner came to the conclusion that there was relationship of employer and employee and the respondents were entitled to compensation of ₹4,45,289/- besides ₹2,500/- towards funeral charges.

7. Learned counsel for the appellant relying upon '*Dharangdhra Chemical Works Ltd. vs. State of Saurashtra & Ors.*', AIR 1957 SC 264; '*A. & A. Accessories vs. Commissioner Workmen's Compensation & Anr.*', 2012 ACJ 514; '*Mackinnon Machenzie & Co.(P) Ltd. vs. Ibrahim Mahmmmed Issak*', 1969 (2) SCC 607; '*Ravjibhai Chhotubhai Waghela vs. Prashant Kisan Shinde & Anr.*', 2015 ACJ 861; and, '*Sher Goods Transport Co. Vs. Tilak Dhari & Ors.*', 49 (1993) DLT 457 urged that the impugned order cannot be sustained as there was no credible evidence on record to prove relationship of employer and employee.

8. Learned counsel for the respondents placing reliance on '*Zila Sahakari Kendrya Bank Maryadit vs. Shahjadi Begum & Ors.*', 2006 ACJ 2845; '*Maghar Singh vs. Jashwant Singh*', 1997 ACJ 517; '*Phuli Devi vs. Jawahar Singh & Anr.*' in LPA No. 54/2009 & CM No.1474/2009; '*Govind Goenka vs. Dayawati & Ors*', II (2012) ACC 705; '*State of Rajasthan vs. Ram Prasad & Anr.*', 2001 ACJ 647; '*New India Assurance Co.Ltd. vs. Rafeeka Sultan & Ors.*', 2001 ACJ 648; '*Parameshwaran vs. M.K.Parameshwaran Nair*', 1991 (1) TAC 416; and, '*Chiman Surakhia Vasva vs. Ahmed Musa Ustad & Ors.*', 1987 ACJ 161 vehemently urged that the appeal is not maintainable as it did not involve any question of law to be decided. The respondents were required to establish that at the relevant time the victim was

under the employment of the appellant. He was not expected to prove it beyond reasonable doubt.

9. The victim's death due to electrocution on 15.07.2009 after sustaining injuries on 12.07.2009 is not at issue. It is also not disputed that victim's death had taken place on the roof of the appellant's house. However, no credible evidence has been produced by the respondents before the Tribunal to ascertain if there was relationship of employer and employee between the victim and the appellant at the relevant time. AW-1 (Lal Babu Rai) admitted in the cross-examination that there was no documentary proof of employment of the victim with the appellant. The findings of the Tribunal are based upon the oral testimony of AW-1 (Lal Babu Rai) but admittedly he had no primary knowledge about the victim's employment with the appellant. No such employment took place in his presence. AW-1 (Lal Babu Rai) did not visit Delhi during victim's stay any time. Nothing has come on record to show if the appellant was engaged in a particular business to provide 'employment' to the victim. In the claim petition, it was alleged that the victim was employed for the purpose of 'cleaning water tank' on the roof. This assertion does not inspire confidence as the appellant who himself had meagre income cannot be expected to pay ₹5,000/- per month to the victim only for cleaning of water tank on the roof. Since both the appellant and the victim were acquainted with each other prior to the incident being from the neighbouring villages, possibility of the victim to have visited the house in the absence of the appellant on the day of incident and sustaining injuries cannot be ruled out. No material has

been collected by the investigating agency in FIR lodged u/S 304A IPC if the victim sustained burn injuries due to electrocution while cleaning the water tank. Nothing is on record to show as to when the victim had gone to the appellant's house and at what time the unfortunate occurrence took place. The respondents did not examine any witness from the neighbourhood to show since when the victim was in employment with the appellant. Nothing has come on record for what specific purpose the victim was employed by the appellant and what was the scope of work. It was the appellant's case from the very inception that the victim used to stay with his cousin Subodh at Samaipur Badli. The respondents did not even examine Subodh to deny the appellant's claim.

10. It has not been elaborated if the appellant has been involved in the FIR under Section 304A IPC. The outcome of the said FIR has not been revealed. It is also not clear if any proceedings were initiated by the respondents against the electricity authorities for their negligence to maintain overhead wires as a result of which the victim got electrocuted.

11. In the cross-examination AW-1 (Lal Babu Rai) informed that before death, the victim had worked with the appellant for 13 months. However, nothing is on record to show if during this period any salary / wages were ever paid by the appellant to the victim. It was also not informed as to what work the victim used to perform during his alleged employment with the appellant, and if so, where and what were the timings.

12. In '*Automobile Assoc. Upper India vs. The P.O.Labour Court II & Anr.*', 130 (2006) DLT 160, this Court held that the primary burden to prove employment remains on a person so claiming. He is required to place on record positive facts in this behalf. He is expected to place on record some material to infer that he had been employed by the appellant. The initial burden of proof remains upon the person who claims so. In this case, the workman filed an affidavit by way of evidence. This Court observed that the only evidence in support of the plea of employment was the self serving affidavit filed by the workman and nothing beyond that to support his claimed plea of service of seven years. It was held that the workman had failed to discharge the burden of proof on him of establishing a relationship of employment.

13. In the instant case also, there is no worthwhile evidence on record to establish that there was relationship of employer and employee between the appellant and the victim or that at the relevant time the victim was under the appellant's control while cleaning the water tank.

14. In view of the above, the impugned order is unsustainable and is set aside. The appeal is allowed.

15. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 19, 2017 / tr