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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 1330 OF 2016

Lakhanlal Koushik Aged About 73 Years Mayaram, owner of Dairy Farm, Village Daija, Post Dhandhan, Tahsil Takhatpur, District Bilaspur (C.G.)

… Appellant

versus

Dharmendra Kumar Pandey S/o Gorelal, Village Daija, Post Dhandhan, Tahsil Takhatpur, District Bilaspur (C.G.)

… Respondent

For Appellant	:	Mr. Parag Kotecha, Advocate.
For Respondent	:	Mr. S.P. Kale, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/01/2018

1. The present is an appeal under Section 30 of the Workmen's Compensation Act assailing the award dated 5.8.2016 whereby the learned Commissioner, Workmen's Compensation Act, Labour Court, Bilaspur, in an injury case, has awarded a compensation of Rs. 1,67,730/- with interest thereon at the rate of 12% per annum to the respondent-claimant.

2. The case in nutshell is that the respondent in the instant case met with an accident on 19.7.2006 when he was operating a machine in the field and his right hand came in contact with the said machine as a result of which his right hand got amputated. The respondent-claimant subsequently moved an application before the Court of Commissioner for the Workmen's Compensation Act, which allowed the application on 5.8.2016 vide the impugned order.

3. Contention of learned counsel for the appellant is that immediately after the accident had occurred the appellant had provided an amount of Rs.70,000/- each to the respondent on two occasions vide two separate agreements entered into between the appellant and the respondent. The said agreements were also got notarized. According to the learned counsel for the appellant these agreements were also produced before the Court below and while passing the impugned award the Commissioner should have adjusted the amount of Rs.1,40,000/- from the total amount of compensation payable to the respondent-claimant. He further submits that the interest part which has been awarded is on the higher side as there was no default or delay on the part of the appellant in payment of compensation as is evident from the two agreements entered into between the parties which would show that the appellant had already paid an amount of Rs.1,40,000/- to the claimant immediately after the accident, and thus prayed for the setting aside of the impugned award.

4. Learned counsel for the respondent however opposing the appeal submits that the said agreements are all false and fake documents. The claimant has not received a single penny from the appellant and that the documents are fabricated documents and the claimant has also denied his signatures on the said documents. He further submits that the award of the Commissioner is purely based on the evidence which have come on record. He further submits that even the interest part which has been awarded is as per the provisions of Section 4A of the Employees Compensation Act and therefore there is no scope of any interference with the impugned award and the appeal deserves to be rejected.

5. Having heard the contentions put forth on either side and on perusal of record what is undisputed is the date of accident to be 19.7.2006. Further it is also not in dispute that the respondent-claimant was working as a worker under the appellant and he met with an accident on 19.7.2006 in which the respondent had sustained injuries on his right hand to the extent that his right hand had got amputated.

6. Coming to the issue whether the payment if any made by the appellant to the claimant can be construed as agreement under Section 28 of the Employees Compensation Act is concerned, it would be relevant at this juncture to refer to Sections 28 and 29 of the Employees Compensation Act, which for ready reference are being produced herein under:

> **"28. Registration of agreements.–** (1) Where the amount of any lump sum payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner:
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> Provided that–
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> (a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned;
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> (b) ****ommitted
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> (c) the Commissioner may at any time rectify the register;
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> (d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable, to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.
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> (2) An agreement for the payment of compensation which has been registered under sub-Section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.
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> **29. Effect of failure to register agreement.–**Where a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the

> Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the employee by way of compensation whether under the agreement or otherwise.**"**

7. Another provisions which would be relevant at this juncture to refer is Rule 48 of the Employees Compensation Rules, 1924:

> **"48. Form of memorandum.–** Memoranda of agreement sent to the Commissioner under sub-section (1) of section 28 shall, unless the Commissioner otherwise directs, be in duplicate, and shall be in as close conformity as the circumstances of the case admit with Fork K or Form L or Form M, as the same may be.**"**

8. A plain perusal of the said provisions of law would clearly reflect that for an agreement under the Employees Compensation Act, there is a proper procedure prescribed and a format also provided in which the agreement has to be moved before the Labour Court for registration. Considering Exhibits D-1 and D-2 which is said to be the agreements between the appellant and worker, would show that it is only an agreement entered on a stamp paper which is said to have been later on notarized. The said stamp paper and notarization of a document by itself would not meet the requirement under Section 28 and 29 so also under Rule 48 and 49. Moreover, if we look into the proceeding before the Labour Court, the two documents, *i.e.*, the agreements, Exhibit D-1 and D-2, have been produced before the Court below not for registration but were produced as an annexure along with the application for taking documents on record which under no circumstances can be construed to be an application moved by the disputing parties for registration of an agreement. Thus, the contention of the learned counsel for the appellant cannot be construed to be a justified ground for adjustment to be made from the final award which has been passed by the Court below.

9. Though the learned counsel for the appellant has relied upon a decision of the Gauhati High Court in the case of *United India Insurance Company* v. *Commissioner for Workmen's Compensation, Zone-III*, 2008 (4) ACJ 2537, but the said judgment is distinguishable on facts itself for the simple reason that the said judgment was arising out of a proceeding where the Commissioner had refused to register the agreement between the parties, whereas in the instant case no such effort had ever been made by the appellant seeking for registration of the agreement. Thus, the said judgment would not come to the aid of the present appellant in the given facts and circumstances of the case.

10. So far as the ground of interest part being on the higher side is concerned, it would be trite at this juncture to refer to Section 4A(3)(a) of the Employee's Compensation Act, which deals with the issue of grant of interest. The statutory provision itself very emphatically lays down the rate of interest to be awarded in the event of there being any delay in the payment of compensation. The statute does not provide any powers on the Commissioner, or for that matter, the Appellate Authority in reducing the rate of interest given the facts and circumstances of the case.

11. Thus, this Court does not find there to be any substantial question of law made out to challenge the impugned award passed by the Commissioner for Workmen's Compensation Act.

12. The appeal thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

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