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

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Date of Decision: 19th January, 2018

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+ **FAO 99/2017 & CM No.4186-4187/2017**

AMIT SETHI

..... Appellant

Through: Mr. Vaibhav Sethi, Ms. Priya
Pathania and Mr. Vikhtat Oberoi
Advs.

versus

SURAJ BHAN

..... Respondent

Through: Mr. R.S. Jena and Mr. K.C.
Baliarsingh, Advs..

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T (O R A L)

1. The appellant has challenged the order dated 11th November, 2016 whereby the Commissioner, Employees' Compensation awarded compensation of Rs.2,13,102/- to the respondent.

2. The respondent instituted an application for compensation before the Commissioner, Employees' Compensation claiming that he was working as helper with the M/s Kalinga Gold and his last drawn salary was Rs.7,000/- per month; on 28th February, 2014 at 10 A.M, the respondent suffered injury in his left knee whereupon he was taken by the other workers to *Pahalwan* Bone Treatment Centre at Madhipur; the respondent took treatment for about four months and he

joined the duty on 28th June, 2014 but the management did not give him the salary for the treatment period of four months and terminated him from service on 10th July, 2014; the left leg has become 90% permanently disabled; the respondent was aged 48 years at the time of the accident; the respondent suffered 90% disability in left leg and entitled to compensation of Rs.6,04,044/- apart from treatment expenses of Rs.40,000/-. The respondent claimed total compensation of Rs.9,46,066/- including 50% as penalty.

3. The respondent contested the claim by denying the relationship of employment as well as the alleged accident. The respondent also denied the permanent disability claimed by the respondent. The respondent examined himself in the witness box as PW-1 and reiterated the averments made in the application for compensation. It was put to the respondent in cross-examination whether he met with any accident in Sirsa, Haryana on 14th July, 2004 which was denied by the respondent whereupon the appellant confronted him with a disability certificate dated 14th July, 2004 issued by General Hospital, Sirsa which was admitted by the respondent and was marked as Mark WW1/M1 according to which the respondent suffered 70% disability in respect of the right lower limb due to post accidental shortening of right lower limb by 7 cm.. The respondent stated in his cross-examination that he suffered injury mentioned in the certificate due to falling in the village. He admitted that the contents of the certificate to be correct.

4. The appellant examined its Accountant, Rajnish Kumar as a witness who deposed that there was no employer-employee

relationship between the appellant and the respondent. The appellant also denied the alleged accident and the disability claimed by the respondent. The witness further deposed that the injury in the right leg was prior to July, 2004 as reflected in the Handicapped Medical Certificate dated 14th July, 2004 (Mark WW1/M1).

5. On 19th June, 2015, the Commissioner, Employees' Compensation referred to respondent to be examined by the Medical Board in pursuance to which the Medical Board of Guru Govind Singh Government Hospital, Raghbir Nagar, New Delhi examined the respondent and issued a certificate according to which the respondent suffered an old fracture neck femur right with uniting fracture patella right and his permanent disability was assessed at 29% in relation to his right lower limb.

6. Learned counsel for the appellant urged at the time of hearing that there was no employer-employee relationship between the parties. It is submitted that vide order dated 10th April, 2015, this Court directed the petitioner to remain present with the record of all the employees for the period 01st April, 2013 to 31st March, 2015 in compliance to which the appellant produced the complete record before this Court on 28th July, 2017 and the photocopy of the complete record was placed on record. It is submitted that the respondent has raised a false claim. It is submitted that the respondent claimed compensation for injury on the left leg whereas the two disability certificates dated 14th July, 2004 as well as 19th June, 2015 relate to an injury on his right leg. It is submitted that the disability certificate dated 14th July, 2004 is prior to the period when the petitioner claims

to have joined the appellant.

7. Learned counsel for the respondent urged at the time of the hearing that there was relationship of employer and employee. Learned counsel further submits that the respondent suffered an accident during the course of his employment on 28th February, 2014 and he suffered permanent disability of 90% in his left leg.

8. On careful consideration of rival contentions of the parties, this Court is of the view that the respondent has failed to prove the relationship of employer-employee with the appellant. The appellant has produced the record of all the employees for the period 01st April, 2013 to 31st March, 2015 and the respondent's name is not there. The respondent has also failed to prove that any accident occurred during the course of the employment on 28th February, 2014. The respondent has not even given the nature of accident suffered by him either in the claim application or the evidence. In the application for compensation as well as the evidence, the respondent claimed to have suffered injury and permanent disability in his left leg but the disability certificate relates to a permanent disability of 29% in respect of the right leg. As such, the respondent has failed to prove any injury with respect to the left leg. The respondent's injury in his right leg admittedly is prior to 14th July, 2004. The disability certificate dated 14th July, 2004 was confronted to the respondent in his cross-examination which was admitted by him. This Court is of the view that the respondent has raised a false claim before this Court.

9. The appeal is allowed, impugned order dated 11th November, 2016 is set aside and the application for compensation of the

respondent is dismissed.

10. Pending applications are disposed of.

11. This case warrants imposition heavy cost but considering that respondent claims to be unemployed, this Court is not imposing any cost against respondent.

12. The appellant has deposited the compensation amount with the Commissioner, Employees' Compensation in terms of the order dated 03rd February, 2017. The Commissioner, Employees' Compensation is directed to refund the amount deposited by the appellant along with interest accrued thereon to the appellant within a period of three weeks from today.

13. The record of the Commissioner, Employees' Compensation be returned back forthwith.

14. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

JANUARY 19, 2018
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J.R. MIDHA, J.