

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

RESERVED ON : 8th DECEMBER, 2017

DECIDED ON : 9th JANUARY, 2018

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FAO 408/2013

M/S M P INDUSTRIES

..... Appellant

Through : Mr.Akash Jardial, Advocate.

versus

SHRI DINESH BANERJEE

..... Respondent

Through : Mr.Abhay Kumar, Advocate with
Mr.Devendra Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by the appellant M/S.M.P.Industries under Section 30 of the Employees Compensation Act, 1923 to impugn an order dated 27.08.2013 of learned Commissioner by which the appellant was directed to pay compensation of ₹3,52,231/- to the respondent. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file.

3. Claim petition was filed by the respondent under Section 22 of the Employees Compensation Act, 1923. It was averred that the respondent was employed as a mechanic in the appellant's factory.

During the employment, he suffered occupational respiratory diseases due to use of certain chemicals / acids in the factory during production process. No safety measures / devices were provided to him while working in the said factory. Because of excessive use of the chemicals, the claimant contracted respiratory diseases and no treatment was provided for it. The claimant got medical treatment and incurred around ₹14,150/- on medical expenses and this amount was not reimbursed to him. On 30.05.2009, the management terminated his service illegally. Demand notice served upon the appellant did not have any effect.

4. The claim petition was contested by the appellant and it was averred that no chemicals / acids were used in the factory. It was having a pollution clearance certificate from Delhi Pollution Control Committee on 30.01.2004. The factory was established in the year 1997. The respondent who was in employment since 1997 was paid ₹55,000/- on 07.06.2009 in full and final settlement of all the claims.

5. The respondent filed his evidence by way of affidavit (Ex.WW-1/A) and relied upon documents (Ex.WW-1/1 to Ex.WW-1/8). The appellant examined Surender Pal Sharma and Manan Sharma who filed their evidence by way of affidavits and proved on record various documents [Annexure-1(A), Annexure-1(B) to Annexure-IV]. After considering the rival contentions of the parties and upon appreciation of the evidence, the learned Commissioner awarded the compensation to the tune of ₹3,52,231/- to the respondent. Being aggrieved and dissatisfied, the instant appeal has been filed.

6. It is not clear as to since when the respondent was in employment with the appellant. He claimed that he was in employment with the appellant's company since 1992 whereas appellant's plea was that the respondent was employed vide appointment letter (Ex.MW-1/1) on 01.07.1997. The respondent did not produce any document on record to show his employment with the appellant since 1992, as urged. In the absence of any credible document on record, it cannot be inferred that the respondent was in employment with the appellant since 1992.

7. It is not in dispute that the respondent had filed proceedings before the Labour Commissioner and reference no.F24/ID/(352)/09/NWD/(460)/11/Lab./3451-55 dated 28.02.2011 was received by the Labour Court. After the receipt of the reference, notice was sent to the parties. In ID No.189/2011, after affording an opportunity to the parties to lead evidence, the learned Presiding Officer Labour Court held that the workman i.e. the respondent was not entitled to any relief in the claim. It is relevant to note that the learned Presiding Officer had noted that ₹55,000/- were paid to the respondent workman in full and final settlement of all the claims. The respondent's plea that he was forced to put signatures on the settlement deed was not accepted by the learned Presiding Officer. The said order seemingly was not challenged and has attained finality. It is further to note that in the said proceedings, the respondent had raised the demand of ₹14,150/- allegedly incurred by him for his medical treatment for respiratory diseases. The said

settlement took place after the termination of the services with the management on 30.05.2009.

8. The claim petition was filed before the Commissioner in 2013. The delay in filing the claim petition has remained unexplained. No document whatsoever has been placed on record by the respondent to show if he had suffered any respiratory diseases during his employment with the appellant. Nothing has come on record to show if any complaint whatsoever was lodged by the respondent against the management for not providing safety gloves or devices while on duty. No complaint to the Labour Officer was lodged. Nothing has come on record to establish clearly if any chemical or acid was being used by the appellant and because of the use of the chemicals the respondent contracted any specific disease. The respondent did not examine any co-worker to ascertain if in similar circumstances any other individual / co-worker had also suffered similar disease. It is also not on record if the respondent had taken any medical leave for getting medical treatment for the said disease. Only after the service of the respondent was terminated and the proceedings before the Labour Court came to an end, the respondent opted to file the claim petition for suffering occupational disease in 2013. In the absence of any evidence whatsoever it cannot be inferred that the management was responsible for the respiratory problems being suffered by the respondent, particularly when it is alleged that the respondent was a chain smoker and possibility of his suffering breathing problem due to that cannot be ruled out.

9. In ‘*Mackinnon Mackenzie and Co. (P) Ltd. vs. Ibrahim Mahmmmed Issak*’, MANU/SC/0310/1969, Hon’ble Supreme Court observed :

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, when, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.

In other words, there must be a causal relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such-- to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises “out of employment.” To put it differently, If the accident had occurred or account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own Imprudent act....”

10. The burden to prove rests upon the workman to prove that the injuries / diseases arose out of employment as well as in the course of employment. The respondent has failed to discharge this burden. The Commissioner did not take into consideration the

pollution certificate obtained by the appellant from the concerned authority. The Labour Commissioner did not summon any record from the appellant's factory to ascertain if any acid or chemical injurious to health was being used in the process and that the appellant's company had not taken any precautions to protect the employees. A disease can be categorised as occupational disease when contracting of such peculiar disease could be attributed to a job done by the employee. As observed above, none else had suffered similar kind of ailment, it cannot be inferred that the disease to the respondent was an occupational disease due to his employment with the appellant's company.

11. In view of the above discussion, the impugned order cannot be sustained and is set aside. The appeal is allowed.

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

(S.P.GARG)
JUDGE

JANUARY 09, 2018 / tr