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

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Date of Decision: 17th April, 2018

+ W.P.(C) 6371/2016 & CM No.26096/2016

SURINDER PAL SINGH

..... Petitioner

Through: Mr. Vinit Virmani, Advocate along
with petitioner in person.

versus

SHRI SHANKER LAL

..... Respondent

Through: Mr. Achin Goel, Advocate along with
respondent in person.
Mr. Shwetank Singh, Advocate for
Mr. Sanjoy Ghose, ASC for GNCTD.
SI Karamvir Singh

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the award dated 15th July, 2015 as well as the order dated 11th April, 2016 passed by the Commissioner, Employees' Compensation.
2. On 30th March, 2014 at about 1.30 PM, the respondent was working as a helper in the petitioner's factory when his left hand was crushed in a machine. The respondent's left hand was amputated upto the elbow level. The police registered FIR No.375/2014 dated 31st March, 2014 at P.S. Rajouri Garden under Section 337/287 IPC in which the chargesheet has been filed. The respondent filed an application for compensation before the

Commissioner, Employees' Compensation which resulted in the award dated 15th July, 2015 whereby the Commissioner, Employees' Compensation directed the petitioner to pay compensation of Rs.7,48,306/- along with interest @ 12% per annum.

3. The petitioner filed an application before the Commissioner, Employees' Compensation for setting aside of the *ex parte* award which was dismissed vide order dated 11th April, 2016. The petitioner filed an application for recalling of the order dated 11th April, 2016 which was dismissed on 18th May, 2016.

4. Learned counsel for the petitioner urged at the time of the hearing that the respondent joined the petitioner's factory just five days before the alleged accident. It is further submitted that the respondent met with the accident in the petitioner's factory due to his own negligence. It is further submitted that the respondent spent about Rs.2 lakh on the treatment of the respondent. It is further submitted that the petitioner settled the matter with the respondent for an amount of Rs.6 lakh out of which Rs.5 lakh was paid to the respondent in cash in two installments of Rs.2,50,000/- each on 25th June, 2014 and 20th July, 2014 and Rs.1 lakh was payable at the time of quashing of the FIR. It is further submitted that the application for compensation was not maintainable due to the aforesaid settlement. It is further submitted that the petitioner was not duly served with the summons before the Commissioner, Employees' Compensation and therefore, the petitioner could not have appeared and contested the claim on merits.

5. Learned counsel for the respondent challenges the maintainability of the writ petition on the ground that the remedy of appeal is available to the petitioner under Section 30 of the Employees Compensation Act. Without

prejudice, it is submitted that the petitioner has not disputed that the accident arose out of and during the course of the employment of the respondent with the petitioner. It is further submitted that there was no settlement between the parties for Rs.6 lakh as alleged by the petitioner. The respondent denies the thumb impression on the alleged settlement document as well as on the two vouchers of alleged cash payment of Rs.2,50,000/- each relied upon by the petitioner. According to the respondent, the petitioner has forged and fabricated the alleged documents. It is submitted that the alleged agreement does not bear any date. It is further submitted that the alleged settlement is void in view of Section 17 read with Sections 28 and 29 of the Employees' Compensation Act. It is further submitted that the petitioner was duly served with the summons.

6. Vide order dated 15th May, 2017, this Court directed the Investigating Officer of FIR No.375/2014 to investigate and ascertain the veracity of the alleged settlement dated 25th June, 2014 and the alleged payment of Rs.5 lakh by the petitioner to respondent no.1 in pursuance to which the Investigating Officer submitted the report according to which the petitioner has borne the medical expenditure of the respondent but the payment of Rs.5 lakh has not been made by the petitioner to the respondent.

7. Section 30 of the Employees' Compensation Act provides the remedy of an appeal to the petitioner and therefore, this writ petition is not maintainable. Notwithstanding the non-maintainability of the appeal, this Court has examined the petitioner's case on merits. The petitioner has neither denied the employer-employee relationship with the respondent nor that the respondent suffered the accident during the course of his employment. In that view of the matter, there is no infirmity in the award of

compensation passed by the Commissioner, Employees' Compensation.

8. Learned counsel for the petitioner submits that the matter be remanded back to the Commissioner, Employees' Compensation to enable the petitioner to prove the alleged settlement agreement and cash payment of Rs.5 lakh to the respondent.

9. Learned counsel for the respondent strongly opposes the prayer of the petitioner on the ground that the alleged settlement is void under Section 17 of the Employees Compensation Act. It is further submitted that the petitioner has violated Section 28 of the Employees Compensation Act by not registering the alleged settlement agreement with the Commissioner, Employees' Compensation and is, therefore, liable for the consequences under Section 29 read with Section 17 of the Employees Compensation Act. It is submitted that the petitioner cannot be permitted to prove a document declared by law to be void.

10. There is merit in the contention urged by learned counsel for the respondent. The petitioner has not submitted the alleged agreement before the Commissioner, Employees' Compensation for registration which is mandatory under Section 28 of the Employee's Compensation Act and, therefore, the petitioner is responsible for its consequences enumerated in Section 29 and 17 of the Employee's Compensation Act. The alleged agreement is, therefore, not enforceable in law. In that view of the matter, the petitioner's prayer for permission to remand the case back in order to allow him to prove the alleged settlement agreement is rejected.

11. The writ petition is dismissed. CM No.26096/2016 is also dismissed.

12. The petitioner has deposited Rs.1 lakh with the Registrar General of this Court. The Registrar General is directed to release the amount to the

respondent.

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

APRIL 17, 2018
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J.R.MIDHA, J.

