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

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Date of Decision: 21st February, 2018

+ W.P.(C) 3155/2017

ROHIT MALHOTRA

..... Petitioner

Through: Mr. Anurag Lakhotia, Advs.
versus

ANAND KUMAR CHAURASIYA & ANR.

..... Respondents

Through: Mr. Hari Kishan, Adv. for respondent
No.1 along with respondent No.1 in
person.
Mr. Guatam Narayan, ASC with Mr.
R.A. Iyer, Adv. for respondent
No.2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the order dated 29th April, 2016 whereby the Commissioner, Employees' Compensation awarded compensation of Rs.9,08,657/- to respondent No.1.
2. Respondent No.1 filed an application for compensation against the petitioner seeking compensation on the ground that he was working with the petitioner as a machine man at a salary of Rs.7,500/-; on 11th October, 2013, the respondent returned back to his quarter after completing his night duty; on 12th October, 2013 at about 2:00-2:30 P.M., he received telephonic instructions that the petitioner's vehicle had gone out of order and another vehicle had been arranged but the driver does not know the route and, therefore, he should accompany the vehicle, whereupon respondent No.1

went with the vehicle which met with an accident with an unknown truck near Khampur, G.T. Karnal Road, P.S. Alipur; the police registered FIR No.470 dated 12th October, 2013 under Sections 279/337 IPC; respondent No.1 was treated at LNJP Hospital and he has suffered 85% disability.

3. As per the record of the Commissioner, Employees' Compensation the *dasti* summons was served on the petitioner on 15th January, 2016. The service report records that the officer, who went to serve the summons, talked to the petitioner and on his instructions, the *munim* Parmanand received the notice. The Commissioner, Employees' Compensation proceeded *ex parte* against petitioner on 18th January, 2016. Respondent No.1 filed *ex parte* evidence before the Commissioner, Employees' Compensation. Respondent No.1 relied upon the disability certificate dated 22nd November, 2014 issued by Medical Board of Satyawadi Raja Harishchandra Hospital according to which respondent No.1 has suffered 85% disability in relation to his upper limbs.

4. The Commissioner, Employees' Compensation held that respondent No.1 was employed with the petitioner and he met with an accident on 12th October, 2013 and the said accident arose out of and during the course of his employment with the petitioner which resulted in disability in relation to his upper limbs. The Commissioner, Employees' Compensation awarded compensation of Rs.9,08,657/- along with interest @ 12% per annum to the respondent.

5. The petitioner challenged the *ex parte* order dated 29th April, 2016 on the ground that he was not served with the summons. According to the petitioner, the summons should have been sent by registered AD or speed post in terms of Rule 41 of the Workmen's Compensation Rules, 1924. It is

further submitted that the disability of the respondent No.1 is 60% according to Schedule I Part II Serial No.4 of the Employees Compensation Act. It is further submitted that the petitioner, Rohit Malhotra is not the proprietor of Kamla Industries. According to the petitioner, Kamla Industries is the proprietorship firm of his father, A.K. Malhotra who had given the said property on rent to the petitioner and the petitioner is running a proprietorship firm named, Pringle & Company in which the respondent was employed as a helper. According to the petitioner, respondent No.1 worked in the night shift on 11th October, 2013 and he left the factory in the morning of 12th October, 2013, which was a Saturday and weekly off for the factory. On 12th October, 2013, the petitioner was informed by some other worker that respondent No.1 suffered an accident at Alipur, G.T. Karnal Road while travelling on tempo whereupon the petitioner directed the staff to give help to the respondent which is stated in the FIR. The petitioner also claimed that he continued to pay salary to respondent No.1 for about two months and continued his employment as a guard whereas respondent No.1 worked with the petitioner for only 10 days and thereafter, respondent No.1 started giving extortion calls and threats to the petitioner. It is further submitted that the owner of the vehicle No.DL-1LL-6070 was not examined to prove that the petitioner had requisitioned the vehicle and respondent No.1 was travelling in the said vehicle on the instructions of the petitioner.

6. Learned counsel for respondent No.1 submits that the writ petition is not maintainable in view of Section 30 of the Employee's Compensation Act which provides an equally efficacious remedy of appeal to the petitioner. It is further submitted that respondent No.1 suffered an accident arising out of and during the course of his employment with the petitioner on 12th October,

2013. It is further submitted that the *dasti* summons were duly served on the petitioner who did not appear despite service. Respondent No.1 claimed the disability of 85% as per the disability certificate.

7. Learned counsel for the petitioner submits that the writ petition is maintainable notwithstanding the remedy of the appeal under Section 30 of the Employee's Compensation Act because the petitioner was not served with the summons. It is therefore submitted that the Rules provide for mandatory service of notice by registered AD Post or speed post but the same was not done. Learned counsel for the petitioner further submits, on instructions, that the petitioner offered Rs.6,50,000/- to respondent No.1 in full and final settlement without prejudice to his rights and contentions.

8. With respect to the respondent's objection to the maintainability of this writ petition, this Court is of the view that the writ petition is maintainable notwithstanding the remedy of appeal under Section 30 but this Court can refuse to exercise its extraordinary writ jurisdiction unless good grounds are made out. In the facts and circumstances of this case, this Court declines to exercise the extraordinary writ jurisdiction. This Court is inclined to convert this writ petition into an appeal but the learned counsel for the petitioner, on instructions from the petitioner, has declined to the conversion of the writ petition into an appeal.

9. This Court has examined the petitioner's case on merits. The petitioner has admitted the relationship of employment with respondent No.1 though a technical objection has been raised that the name of his proprietorship firm is Pringle & Company and not Kamla Industries. According to the petitioner, he did not engage vehicle No.DL-1LL-6070 and did not instruct respondent No.1 to go anywhere on 12th October, 2013. In

order to satisfy as to whether the petitioner engaged vehicle No.DL-1LL-6070, this Court, vide order dated 3rd August, 2017, issued notice to Mr. Sanjay Gupta, owner of vehicle No.DL-1LL-6070 in which respondent No.1 was travelling at the time of the accident on 12th October, 2016. This Court also requisitioned the record of FIR No.470/2013, P.S. Alipur under Sections 279/337 IPC vide order dated 24th May, 2017. On 22nd September, 2017, ASI Pradeep Kumar from P.S. Alipur produced Mr. Sanjay Gupta, owner of vehicle bearing No. DL-1LL-6070 who stated that his vehicle was requisitioned by petitioner on the date of the accident, the vehicle was driven by his driver, Ranjan and respondent No.1 was travelling in the vehicle at the time of accident.

10. With respect to the disability suffered by respondent No.1, this Court has examined the condition of respondent No.1. The photograph of the injured portion of respondent No.1 is taken on record and is annexed as *Annexure-A* to this judgment (*copy of the photograph shall not to be uploaded on the website*). With respect to the petitioner's objection to the service of *dasti* summons, it is noted that the Process Server visited the petitioner on 15th January, 2016 and he talked to the petitioner and on his instructions, his *munim*, Parmanand, received the summons. The petitioner has nowhere denied that the Process Server did not visit him on 15th January, 2016 and he never instructed his *munim*, Parmanand, to accept the notice. The petitioner has also not denied that Parmanand was not working with him or he has not received the summons or he has not given the summons to the petitioner. In view of valid service of *dasti* summons, the failure to send the summons by registered AD post would not vitiate the proceedings.

11. For the reasons given hereinabove, the writ petition is dismissed.

12. The petitioner has deposited Rs.5,00,000/- with the Registrar General of this Court in terms of the order dated 24th May, 2017.

13. The Registrar General is directed to disburse the said amount in the following manner:

(i) Rs.2,50,000/- be kept in 25 FDRs of Rs.10,000/- each in the name of respondent No.1 for the period 1 month to 25 months respectively with cumulative interest.

(ii) The balance amount, after keeping the amount of Rs.2,50,000/- in FDRs, be transferred to the savings bank account No.3591380869, Central Bank of India, Narela Branch, Delhi, MICR Code: 110016088, IFSC Code : CBIN0283195 of respondent No.1.

14. At the time of maturity, the maturity amounts of the FDRs be credited in the aforesaid savings bank account of respondent No.1.

15. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDRs number, amount, date of maturity and maturity amount shall be furnished by UCO Bank to the respondent No.1.

16. No cheque book or debit card be issued to the respondent No.1 without permission of this Court. However, respondent No.1 be permitted to withdraw money from his savings bank account by means of a withdrawal form.

17. No loan or advance or pre-mature discharge of FDRs shall be permitted without the permission of this Court.

18. Learned counsel for the petitioner seeks interim stay of this judgment to enable the petitioner to avail the remedy of appeal against this judgment. The prayer is rejected, considering that the petitioner was ready and willing

to pay Rs.6,50,000/- to the respondent no.1.

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

FEBRUARY 21, 2018
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J.R. MIDHA, J.

