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

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Judgment delivered on: 06.03.2018

+ **FAO 165/2017 & CM APPL. 10805/2017**

RAJESH DANG AND ANR

..... Appellants

Through: Ms. Saahila Lamba, Advocate.

Versus

BRIJ MOHAN

..... Respondent

Through: Ms. Anubha Kaushal, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

The appellants impugn an order dated 08.02.2017 awarding an amount of Rs. 1,27,711/- in favour of the respondent for the injury suffered by him during the course of employment.

It is the respondents' case that he used to work for the appellants at his 'power-press' machine at monthly wages of Rs. 9,000/-. On 11.12.2014, while operating the said machine, suddenly its brakes malfunctioned due to which three fingers of his right hand were badly crushed leading to permanent disablement of 16%. The workman had sought compensation for 100% disability. The appellant had denied the employment of the workman. However, he admitted that the workman used to work for him on daily wages basis now and then, but he was not employed on the day when the

accident occurred. It is the appellant's case that there is no proof that the accident happened on his machine while the respondent was employed. Since, there was no medical certificate, no complaint or document of medication or otherwise to show that the accident happened on the said date, the Court would note that the serious injury of the nature which the workman suffered needed immediate medical attention. Such an injured workman while in a state of excruciating pain, shock and resultant melee for immediate medical care, would also be haunted by the fear of his future employability, with his present employer or for that matter, anywhere else. It is not denied that the appellant had himself taken the respondent for medical treatment. If the injury was because of the workman's employment/discharging duties on some else machine, then the outmen of the latter machine would have taken immediate corrective measures, provisions of medical assistance, etc. If the workman was a casual employee rendering his services to the appellant occasionally and not injured while working on the appellant's machine, then there was no reason why he was taken by the appellant to medical treatment. The inference to be drawn is that he was a workman on the machine in the employment of the appellant. If the workman was injured elsewhere then the alternative theory ought to have been set up by the appellant. Mere denial of injury on his machine is not enough. The reasoning and conclusion in the impugned order cannot be faulted.

The Court would note that the injured workman does mention four other workmen who were working on the appellant's machines when the injury happened. They may all have been casual labourers but for fear of losing their temporary employment with the appellant, they may not have

had the courage or been ready to support the injured workman's case. It is also possible that because of ignorance, poverty and lack of proper legal advice in such exigency, the injured workman may not have kept proof of injury or medical certificate or any medication taken by him pursuant to the injury.

What emerges from the aforesaid is that an accident happened on 11.12.2014, the appellant took the injured workman for medical treatment. A legal notice was sent which was not responded to. The workman was employed by the appellant now and then, therefore, he was deemed to be employee of the appellant. Accordingly, the impugned order cannot be faulted. It is submitted that the appellant had sought compensation as his working capacity got decreased by 9% due to injury and limited his claim to Rs. 71,712/-. The said argument is fallacious and untenable, because what is to be awarded as compensation to a workman is specified in the Schedule to the Act. The Aruna Asaf Ali Hospital, Rajpur Road, Delhi has certified that the workman has suffered 16% permanent disability (amputation of fingers of right hand). It is this percentage of disability which was considered in the impugned order, while computing the loss of earning capacity bearing in mind his monthly wage and his age of 46 years. Accordingly, an amount of Rs. 1,27,711/- has been awarded alongwith interest @12% p.a.

The learned counsel for the appellant submits that the rate of interest of 12% p.a. for the years 2016 and 2017 on the compensation amount is on the higher side. It is true that the rate of interest on fixed deposits has reduced in the past couple of years. In the circumstances, the rate of interest on the compensation amount is reduced to 11%.

The amount deposited with this Court be released to the respondent into his bank account maintained at a place near his residence. The excess amount of the interest shall be refunded to the appellant.

The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

MARCH 06, 2018

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