

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

107

CR No.3132of 2018

Date of decision:25.3.2019

Ram Singh

... Petitioner

versus

Laron Engineers & Consultant Private Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Kamal Sharma, Advocate,
for the petitioner
Mr.Vikas Mohan Gupta, Advocate,
for respondent no.1
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the order passed by the learned Commissioner (authority under the Employees Compensation Act, 1923) on 25.4.2018, by which an application filed by the respondent herein, seeking that the order earlier passed by the Commissioner on 24.3.2017 be recalled, has been allowed.

Vide the said order dated 24.3.2017 (Annexure P-5), the petitioner had been awarded a sum of Rs.9,38,609/- (along with interest @ 12% per annum), on account of the unfortunate death of his son because of a road side accident that is stated to have taken place on 15.5.2011, he having thereafter died on 16.5.2011.

The said order was passed after the respondent company had been proceeded against *ex parte*, the report of service of the registered

notice issued to it, in the claim application filed by the petitioner, having been returned with the remarks that the post was refused to be accepted.

After the order dated 24.3.2017 had been passed, the application seeking recalling of that order was filed on 13.9.2017, i.e. after about 6 months of the order.

2. Mr.Gupta, learned counsel for the respondent, has also pointed out that earlier, on 17.7.2017, an order had been passed (copy Annexure P-8) correcting the name of the respondent company in the order dated 24.3.2017 to “Laron Engineers & Consultant Pvt. Ltd.”, it having been erroneously shown earlier as “Larson Engineers & Consultant Pvt. Ltd.”.

However, Mr.Sharma, learned counsel for the petitioner, has pointed from one of the documents that constitutes Annexure P-3 collectively, i.e. the cover of the registered post stated to have been sent to the respondent, to submit that the letter by which notice was issued, was actually addressed to the “Manager, HRI Admin., Laron Engineers & Consultant Pvt. Ltd. Indian Oil Corporation Ltd., Refinery situated at Village Bohali, Teh. & Distt. Panipat through its authorized signatory/person”.

Thus, he submits that simply because in the order dated 24.3.2017, and subsequently in the receipt issued by the post office (as has also been pointed to by Mr.Gupta), incorrect names were shown, does not take away the fact that the notice was issued for the correct address of the respondent, showing its correct name, which letter (as per the report of the postal department), was refused by the respondent, leading to it having been proceeded against *ex parte*.

3. Having considered that, it is seen that vide the impugned order the learned Commissioner has in fact stated that respondent no.1 (i.e. the first respondent herein also) could not actually rebut the fact that the company had been informed of the factum of the petition/application filed by the petitioner before the Commissioner.

Even so, holding that natural justice requires that a person should not be “condemned unheard”, the application of the respondent was allowed vide the impugned order, subject to payment of costs of Rs.5,000/- to the petitioner with the case ordered to be heard on merits on the next date of hearing.

Though otherwise there would be no reason to disagree with Mr.Sharma, to the effect that once respondent no.1 could not disprove that it had actually been served of the notice earlier issued, and the Commissioner has recorded a finding to that effect, and the impugned order should therefore be set aside on that ground, however, as Mr.Gupta, learned counsel for the respondent, has pointed out, the son of the petitioner unfortunately having died on 16.5.2011 and the claim petition/application having been filed by the petitioner only on 8.3.2016, in my opinion the impugned order, to the extent of allowing the respondent to be heard in the petition, need not be interfered with, though the petitioner deserves to be compensated with an amount more than just Rs.5,000/- as costs.

Consequently, while dismissing this petition, costs of Rs.30,000/- are ordered to be paid to the petitioner by the respondent, subject to which only, the respondent would be heard on merits by the Commissioner.

It is made clear that this Court has not made any observation, whatsoever, on the merits of the case of either party, which would be gone into by the learned Commissioner wholly on the basis of evidence led before it, on all aspects.

The parties would now appear before the learned Commissioner, either themselves or through counsel, on 8.4.2019, after which the learned Commissioner would proceed and decide the petition within a period of 3 months as per the statutory provision contained in Section 25A of the Employees Compensation Act, 1923.

25.3.2019
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No