

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

% *Judgment delivered on: 15.05.2019*

+ **FAO 77/2017**

ASHWANI CHOPRA

.... Appellant

Through: Mr. Mahesh Ranjan, Adv.

versus

M/S. NEW INDIAN CAMPUS BANQUET & GARDEN & ANR.

....Respondents

Through: Mr. Sumit Sinha and Ms. Anjali Ranput,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J**

This appeal impugns the order dated 08.12.2016 passed by the learned Commissioner, Employee's Compensation whereby the Claim Petition of the claimant/appellant was dismissed. The impugned order has inter alia reasoned and held as under:

*"24. I find that in the letter/ complaint / petition dated 28.12.2015 the Claimant has stated that upon the use of abusive language by the customer he went to the roof to get the shed repair himself and it is nowhere stated that he did so on the directions of Respondent No. 2. Respondent No. 2 is not even stated to be present at the time of accident on 02.03.2016. However, subsequently in the rejoinder dated 28.01.2016 and the claim petition dated 29.08.2016 the Claimant has improved his case stating that upon the direction of R-2 he had gone on the iron roof of the banquet to repair the iron shed/ roof of the banquet. That the Claimant obeyed the forceful order of the Respondent started to work on the said defective iron roof / shed. While working on the said roof he*

*met with an accident and suddenly fell down from the iron roof / shed of the banquet, resulting in suffering the injuries.*

*25. Further, I find that a new fact has come in the evidence of the witnesses of the Respondent that some construction work was going on in the premises of the banquet hall where the Claimant met with an accident. However, this fact is not stated neither by the Claimant anywhere in any of his documents nor by the Respondent in his written statement. The Respondent's witnesses have also admitted that the Claimant had fallen from the roof and he suffered injuries.*

*26. Further it reveals that at the time of Claimant suffered injury nobody was present on the spot where the Claimant alleges that he was repairing the roof / tin shed. None of the witnesses have stated that some halwai was working under the roof of a tin shed. By his own admission of the Claimant it reveals that nobody was present in the area / place where the halwais are stated to be working at the time when the Claimant went to the roof and tried to repair the tin roof.*

*27. Further it reveals that the Respondent's witnesses have tried to make out a case that the Respondent had directed all his workers not to go in the area where the construction work was going on.*

*28. Further the perusal of the record it reveals that after 19.03.2013, in the month of August, 2015 the Claimant consulted the doctor in Narender Mohan, Hospital, Ghazaibad last and paid Rs. 300/- as the consultancy fees. No bills for purchase of medicine have been placed on record after the said consultancy. Thereafter on 15.01.2016 the Claimant has purchased some ayurvedic medicines from S.K. Medicos Shahdara, Delhi. No prescription slip from a register medical practitioner has been filed on record by the Claimant. There is no evidence that the said medicines have been prescribed by a Orthopaedician or by a physician for some different ailment other than the injuries suffered in the accident. In the circumstances it cannot be ascertained that the said medicines which are 'churns' only relate to the treatment of the Claimant for the injuries in question, Thus I*

*find that after August, 2013 the Claimant has not consulted any doctor or any hospital in connection with his injury in question. In such circumstances the delay in filing the claim petition after a lapse of two years and nine months also remains unexplainable.*

*29. Further I find that the Claimant has also not given any specific dates in his claim petition on which he went to the Respondent for re-employment in the banquet hall or for the purpose of raising a demand for payment of compensation to him.*

*30. Usually the doctors issue a disability certificate on the request of public authorities. The Claimant has not filed on record any written orders of any public officer who sent a request to the hospital authorities for his medical examination and for issue of a disability certificate. In such a situation it cannot be believed that injuries mentioned in the disability certificate pertain to the accident suffered by him on 02.03.2013. Disability Certificate has been issued on 21.03.2015. The Respondent would submit that the condition of the Claimant was satisfactory and in this regard replaces reliance upon the discharge summary Ex. RW1/D Colly. However, in the absence of any evidence led by the Respondent that the Claimant has suffered another injury subsequent to 02.03.2013 or bringing any evidence that the disability certificate placed on record by the Claimant was forged and fabricated document, it cannot be conclusively said that the said document is not a genuine document. However I do not placed much reliance on this argument of the Respondent as the case of the Claimant is being disposed-off on other facts.*

*31. Further it reveals that the Respondent got the Claimant treated during the period 02.03.2013 to 12.03.2013 (documents Ex. RW1/C Colly 43 pages) and also Ex. RW1/A. That on 19.03.2013 the Claimant was in good condition (document Ex. RW1/E Colly 4 pages). No questions have been asked by Claimant above these documents in the cross examination of Respondent's witnesses.*

*32. Further I find that in communication addressed Lt. Governor a person Laxman is named as a person who accompanied the Claimant to the roof as the other staff had run away but in the*

*claim petition or the rejoinder filed in reply to the written statement of the Respondent the Claimant has not named the said Laxman anywhere. Even in cross examination of the three witnesses examined on behalf of the Respondent the Claimant has not asked any questions about Laxman from any of the witness.*

*33. Further, evidence reveals that the Claimant is of adamant nature and have a habit of interfering in the work of his co-worker. Further that the Claimant was never given the task to supervise the work of labour or supervise any undergoing construction work taking place in the banquet hall. That the accident happened due to the negligence of the Claimant himself.*

*34. Further from the material on record it reveals that Respondent No. 2 was not present at the spot on 02.03.2013 when the Claimant suffered injury. That some labour was working on the terrace and Claimant went there out of his own free will and there was no need for him to go to the roof as it was not the work of the Claimant to oversee the work of construction / repair though this is the new case brought in evidence by the respondent and also not denied by the Claimant.*

*35. Further, reveals that the Claimant never approached the Respondent after the accident for the first time he received a notice upon the claim petition of the Claimant dated 28.12.2015.*

*36. Further, I find that the Claimant was appointed as Supervisor / Manager to look after the arrangements / monitoring the work relating to marriage parties / parties / function organized in the banquet hall and he endeavored to do the job which was not part of his duty and unnecessarily risked his life and he has not been directed by the Respondent's to do the same. Claimant was aged 56 and such an advanced age climbing a roof of a iron sheet to refix the sheet was a negligent act on his part. Further Laxman was with him who was his subordinate though his age has not been disclosed by the Claimant, the Claimant could have asked Laxman to do the work if he was having expertise for the work in question.*

*37. Further I further find that the there is no explanation from the Claimant as to the delay in filing the claim petition nor is there any application for condonation of delay in filing the application.*

*38. Further I find that the definition of employee is given under Section 2(1)(d)(d) in the Act read with the Schedule II. I have perused the Schedule II to find out as to whether the Claimant would be covered under any of the, entries in the Schedule. The most proximate entry where the Claimant would have fallen is entry No. xxxii of the Schedule 11 of Section 2 (1)(d)(d) which reads as under:-*

*"employed in cook houses, messes, bakeries or catering establishments in which food for over fifty person, is prepared or more than two hundred loaves of bread per day are prepared or training to at least ten crooks or caterers is imparted at any time". However, I am of the opinion that even stretching entry the Claimant was appointed as Manager / Supervisor in a banquet hall to supervise the parties would not fall under the above definition. Accordingly as hold that the Claimant is not an employee under the definition of Section 2 (1 )(d)(d)."*

*39. In the light of above discussions all issues framed in the case are decided against the Claimant and in favour of the Respondents. Claim petition is accordingly dismissed. Given under my hand and seal of this court on this OS"" day of December, 2016."*

The learned counsel for the appellant submits that it remains undisputed that the appellant was employed with the respondents and was assigned the job of caretaker in the Banquet Hall of the respondents; therefore, it could not be said that supervising the repair work carried out on the roof of the Banquet Hall was not a part of the duty of the appellant. It is further submitted that unnecessary reliance was placed on the testimony of RW-2 and RW-3 who are interested witnesses, being planted out by the respondent no.2, to lay credence to a false and concocted story made out by respondent no.2, in order to prove

that the cause of accident was nothing but negligence on the part of the appellant; that none of the abovementioned witnesses (i.e. RW-2 and RW-3) were actually present on the roof of the Banquet Hall when the accident took place.

The learned counsel for the appellant contends that the impugned order has erred in misinterpreting and misconstruing the definition of “Employee” as mentioned in section 2(1)(d)(d) of the Employees’ Compensation Act, 1923, as it does not make any distinction or discrimination relating to category of employees and does not even remotely suggest that a Manager or a Caretaker/Supervisor would not be covered under the said definition; that once it was established that respondent no. 1 was covered within the Entry No. (xxxii) of Schedule-II of the Act, each and every employee would fall within the definition of “Employee” as defined under section 2(1)(d)(d) of the Act; that the learned Commissioner failed to consider that section 3 of the Employee Compensation Act does not permit the employer to avoid his liability if there was negligence on part of workman; it is also argued that the respondents have purposely chosen not to examine the labourers who were carrying out the repair work and hence, the alleged negligence purported to be the cause of the injury suffered by the appellant has not been proven or established.

The learned counsel for the respondents’ submits that the claimant contradicted his own statement when in the complaint dated 18.12.2015 it was stated that upon the use of abusive language by the customer, the claimant went to the roof without any instructions from respondent no.2 and that respondent no.2 was not present there, but later in the Claim Petition dated 29.08.2016 it was stated that he went to the roof upon the direction of

respondent no.2. It is also clear from the facts and evidence of witnesses that nobody was present at the spot when he suffered the injuries; that even the appellant himself admits that no one was present in the area where the halwais were stated to be working at the time when the appellant went to the roof; that the appellant was only appointed as a supervisor and was allowed only to supervise the work done in the premises of respondent no.1; that the claim petition had been filed with malafide intension only to harass and extort money from the respondents; that the appellant has not made out any ground for his claim against the respondents; that no proof of employment has been brought on record by the appellant and that after leaving the job in March, 2013, the appellant never approached respondents, and lastly, that the Claim Petition was filed after an unexplained delay of more than 2 years.

It is to be noted that no prescription slip from a registered medical practitioner has been produced by the claimant and that there is no evidence on record to show that any medicine had been prescribed to him by a competent doctor. The appellant has also not brought anything on the record to show that he consulted any doctor/hospital in connection with his injury after August, 2013. Neither has the claimant/appellant provided any dates as to when he raised any demand for compensation or asked for re-employment with the respondent nor has he brought on record any written orders of any public officer who sent a request to the hospital for his medical examination and for issuance of a Disability Certificate. The accident took place on 02.03.2013 and the Disability Certificate was issued 2 years later on 21.03.2015. It is unclear as to why the said certificate was issued to him after such a long time and not immediately after the said accident. It is also to be noted that the respondent has failed to lead any evidence to show that the claimant/appellant suffered

injuries on 02.03.2013 pursuant to the alleged fall which led to his Disability Certificate.

It is clear from the deposition of the witnesses, that the respondent got the claimant/appellant treated from 02.03.2013 to 12.03.2013 and that the claimant was in a good healthy condition on 19.03.2013.

It is odd, as to why the claimant/appellant after stating in his communication addressed to the Lt. Governor that one person named Laxman accompanied him to the roof, did not mention the same fact in his Claim petition or his rejoinder; he also did not refer at all to Laxman in the cross examination of the defendants' witnesses. What emerges from the above is that the claimant/appellant was never given the task to supervise the work of labour or the undergoing construction work and that the accident was due to his negligence; that he was appointed as Supervisor/Manager for monitoring the work related to parties/functions organised in the Banquet Hall; that there was no need for him to go to the roof as it was not his job. The appellant has till date not produced any document/witness to show that he was assigned the task of supervising the said construction work. Further, the records reveal that the claimant/appellant never approached the respondent after the accident for payment of any compensation or damages until notice was issued in his Claim Petition. It is also to be noted that there was no application filed or reason given for condonation of delay by the claimant/appellant.

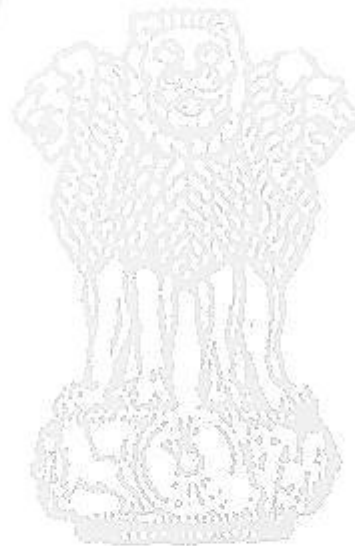
Ordinarily a person having suffered the kind of injury, pain and disability, as claimed by the petitioner, would have pursued the matter with the doctors, and for compensation for reimbursement of expenses from his employer, if the injury was caused during the discharge of employment duties.

The appellant's Disability Certificate is of three years after the medical care was accorded to him in March, 2013. There is no evidence of the period between March, 2013 to 21.03.2015 when the Disability Certificate was issued to him.

Therefore, it is clear from the above that the injuries suffered by the appellant were due to his own negligence. The impugned order requires no interference. The petition is without merits and is accordingly dismissed.

**NAJMI WAZIRI, J**

**MAY 15, 2019**



नित्यमेव जयते