



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

+ **FAO 440/2018**

Reserved on : 13/09/2022

Date of Decision : 07/10/2022

IN THE MATTER OF:

MARLO OR FAB GOLD

..... Appellant

Through: Mr. Rajiv Shukla, Ms. Shivani
Kapoor and Mr. Sahaj Karan Singh,
Advocates.

Versus

ARVIND

..... Respondent

Through: Mr. Sanjay Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 38381/2018 (Delay)

1. By way of present application filed under Section 5 of the Limitation Act, the appellant seeks condonation of delay of 121 days in filing the present appeal.
2. The only explanation given in the application for the delay is that the counsel engaged by the appellant did not update it about the proceedings and the appellant came to know about passing of the impugned order only when it received a call from the Court of the concerned SDM for recovery of the amount mentioned therein in the month of July, 2018.



3. In my view, not only the explanation given on behalf of the appellant is insufficient but also no document has been placed on record to show as to what action has been taken by the appellant against its former counsel. Be that as it may, I proceed to consider the appeal on merits in the interest of justice.

FAO 440/2018 & CM APPL. 38382/2018

1. By way of present appeal filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant has assailed the order dated 28.02.2018 passed by the learned Commissioner, Employees' Compensation in Case No.WC/CD/1/2017/200, whereby claim petition of the respondent/claimant was allowed and appellant/its proprietor(s) held entitled to pay Rs.3,17,717/- alongwith simple interest @ 12% p.a. calculated w.e.f. 01.03.2018.

2. Brief facts, as culled out from the impugned order, are as follows :-

"1. This order shall dispose of the claim petition filed by the above named claimant on 30.01.17 under Employee's Compensation Act, 1923 (herein after referred to as the Act). That Claimant was working as 'Cutting Man' with the Respondent on the last wages drawn of Rs. 14,000/- per month for the last 10 years. That on 18.08.2016 when the Claimant took the roll of jeans he suddenly slipped and fell down on the floor with roll of jeans. That he received several injures in his right limb. Respondent neither took the claimant to the hospital nor paid any amount for his injury. After having a lot of severe pain, he requested the Respondent for taking him to the Hospital. On 24.08.2016, the Respondent took him for his treatment to the Sir Ganga Ram Hospital, Rajinder Nagar, New Delhi-60 where a MRI of the clamant was done and doctors of the hospital advised him for operation for the injury of Spinal Limb. Till date the Respondent has not paid a single pie for his treatment as required under the law. That the claimant has



spent Rs. 3,00,000/- on his treatment till date. A demand notice was sent on 25.01.2017 to the Respondent but no reply has been received by the Claimant from the Respondent so far. The claimant has become handicapped and lost his earning capacity of 90% and also causing him permanent partial disability. That claimant is entitled to a sum amount of Rs.10,67,472/- as compensation with 12% interest with 50% penalty and Rs. 50,000/- as medical expenses of his disabilities in his earning capacity due to employment accident under the provisions of the Employee's Compensation Act."

3. Learned counsel for the appellant disputed the factum of claimant being an 'employee' of the appellant in terms of the EC Act. The appellant's case is that though the claimant used to be engaged by it sometimes, he was never employed for a 'period'. As such, the claimant could neither be termed as a permanent nor as a temporary employee. Learned counsel also placed reliance on the Award dated 02.02.2018 passed by the Pilot Court/POLC-XVII, Dwarka Courts, Delhi in LIR No.2613/17, wherein while answering reference of an industrial dispute, it was held that the claimant had failed to establish employer-employee relationship.
4. Learned counsel for the respondent/claimant, on the other hand, supported the impugned order. It was argued that the employer-employee relationship was sufficiently established before the learned Commissioner. It was further contended that in terms of amended definition of 'employee' under the EC Act, a 'casual' employee is entitled to compensation for injury caused during and in the course of employment.
5. I have heard the learned counsels for the parties and gone through the entire records of the learned Commissioner, Employees' Compensation.



6. It has been averred on behalf of the appellant that while passing of the impugned order, the learned Commissioner did not appreciate that the claimant had failed to establish employer-employee relationship between the parties. In this regard, it is noted that during the proceedings before the learned Commissioner, the claimant had examined himself as CW1 and exhibited the following documents :- photocopy of Complaint to Thana, Prasad Nagar (*Ex. WW1/1*); copy of Postal Receipt (*Ex. WW1/2*); copy of disability certificate (*Ex. WW1/3*); copy of Demand notice (*Ex. WW1/4*); photocopy of postal-receipt (*Ex. WW1/5*); copy of Affidavit of *Sh. Harish and Ravinder Giri* (*Ex. WW1/6-WW1/7*); photocopy of gift given on Diwali (*Ex. WW1/7-WW1/8*) and photocopy of R.N. Enterprises for Jeans (*Ex. WW1/9*).

7. In the claimant's evidence filed by way of affidavit (*Ex. CW1/A*), it was stated that he was employed with the appellant for last 10 years and was drawing a salary of Rs.14,000/- per month. The appellant had neither issued any appointment letter at the time of employing the claimant nor any ID Card during the course thereof. Statedly, the claimant was also not provided any other facilities or employment benefits like attendance card, minimum wages, casual/festival leaves, compensation for overtime, etc.

It was further claimed that on 18.08.2016, while he was carrying a roll of jeans, the claimant slipped and fell on the floor alongwith the roll which resulted in severe injury on his right hip. He was not immediately taken by the management to a hospital for treatment and continued to work, due to which the pain became unbearable. Ultimately, the claimant was taken by the appellant/management to Sir Ganga Ram Hospital, Rajendra Nagar on



24.08.2016, where he was advised surgery however the appellant/management refused to pay for treatment.

It was also claimed that one *Ravinder Giri* and one *Harish Ram* (*Harish Master*) were claimant's co-workers and their evidence was tendered in proof of the claim.

8. The claimant was cross-examined by the appellant before the Tribunal, when he reiterated that he met with an accident in the factory premises during the course of employment on 18.08.2016. It is worthwhile to note that in the cross-examination of the claimant, no suggestion was given to the extent that there was no employer-employee relationship between the parties or that the claimant was deposing falsely on the aspect of the accident having occurred in the appellant's premises. On the contrary, a suggestion was given to the effect that he had worked from 18.08.2016 to 24.08.2016, to which the claimant had answered as follows:

"It is correct that I was working from 18/8/2016 to 24/08/2016 after taking medicine."

9. Both the witnesses *Ravinder Giri* and *Harish Ram* also tendered their evidence, wherein it was stated that the claimant was employed with the appellant. It was further stated that the claimant had suffered an injury on his right hip on 18.08.2016 when he slipped while carrying a roll of jeans in their presence. The witnesses also stated that the appellant had not issued any appointment letters to the employees or granted employment benefits to them. Though the appellant cross-examined the claimant, it failed to cross-examine the aforesaid two witnesses.

10. In light of the foregoing, the learned Commissioner decided the issue of employer-employee relationship in favor of the claimant.



11. There is no gainsaying that labour statutes such as the EC Act constitute '*beneficial legislation*' for the welfare of workmen and should be liberally construed in their favour. In this regard, the Supreme Court in Jaya Biswal and Others v. Branch Manager, IFFCO Tokio General Insurance Company Limited and Another reported as **(2016) 11 SCC 201** has opined thus:-

“20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work. This becomes clear from a perusal of the preamble of the Act which reads as under:

“An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.”

This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:

“... The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a



corresponding increase in the efficiency of the average workman may be expected.”

(emphasis supplied)

21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such.”

12. Further, an appeal filed under Section 30 of the EC Act is confined only to examination of substantial questions of law and is not to be considered on the touchstone of an appeal akin to Section 96 of the Code of Civil Procedure, 1908. At this juncture, this Court may profitably refer to the decision in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514**. In the captioned case, the Supreme Court reiterated that the scope of interference in an appeal filed under Section 30 of the EC Act is limited to substantial questions of law and findings of facts proved either way, are not to be interfered with. It was further held as under:-

“9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of



his employment and he/his LR(s) sue(s) his employer to claim compensation under the Act.

10. The aforementioned questions are essentially the questions of fact and therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.

11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case.”

13. As noted above, while the claimant in the present case led evidence in support of establishing employer-employee relationship, the appellant not only failed to lead evidence to deny such relationship but also failed to discredit the witnesses examined by the claimant in his support. In this view of the matter, the reference made by appellant to the order passed by Labour Court is also deemed to be of no consequence. As such, this Court finds no ground to interfere with the findings of the learned Commissioner on the employer-employee relationship.

14. Another contention raised on behalf of the appellant was that the claimant was not its permanent or temporary employee and as such, it is not



liable to pay compensation. The said contention is also found meritless in view of the law laid down by this Court in Govind Goenka v. Dayawati and others reported as **2012 SCC OnLine Del 1723** and Brijesh Kumar Verma v. Aurangjeb & Anr. reported as **2017 SCC OnLine Del 12513**.

15. In Govind Goenka (Supra), a Co-ordinate Bench of this Court analysed the change in the scope of definition of ‘workman’ under the EC Act post its amendment in the year 2000 and held as under:-

“8. So far as the definition of workman envisaged in Section 2(n) of the said Act is concerned, there has been a drastic change in the definition of the “Workman” as it stood prior to the amendment and after the amendment. Prior to the amendment, certainly the workman whose employment was of a casual nature and who was employed otherwise than for the purpose of trade or Business of the employer would not fall in the said definition. However, after the amendment of the said definition through the Amending Act 46 of 2000, the Parliament had removed the said mischief which was then prevailing and coming in the way of such casual Workmen who met with an accident during the course of the employment unconnected with the employer's trade or Business. With the amendment of the said definition, now certainly the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or Business would also be covered within the definition of workman. The impact of the difference of the definition of the workman as it stood prior to the amendment and after the amendment has been referred to in the case of in Om Prakash Batish v. Ranjit @ Ranbir Kaur, JT 2008 (5) SC 443, and relevant paragraphs of the same are reproduced as under:

“21. The definition of “workman” as provided in Section 2(n) of the Act, as it stood on the date of the incident, reads as under:



“(n) ‘‘Workman’’ means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or Business who is-

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.’’

The ingredients of the said provisions are:

(i) The Workman must not be employed as a casual Workman;

(ii) His employment must be in connection with the employer's trade and Business.

22. We must, however, place on record that the words beginning from ‘‘other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or Business’’ have been omitted by Act 46 of 2000. We are, however, considering the statutory provision as it then stood.

23. The Workman in the present case was employed for a limited period for carrying out repair works in a residential house. The same does not, thus, answer the description of a workman as contained in the provision of the Act.

24. Schedule II appended to the said Act to which reference was made by Mr. Dhingra, in our opinion, is not applicable, as it is subject to the provisions of Section 2(1)(n) of the Act. If, therefore, the law as it then stood would exclude the applicability of the Act, having regard to the definition of the term ‘‘workman’’ the same cannot be held to include deceased



only because he was working in connection with a building activity.

Even otherwise, working in a residential house does not satisfy the requirement of law.

25. We must also bear in mind that the very fact that the Act was amended is itself a pointer to show that the Parliament intended to avoid a mischief which was prevailing.

Applying the Principles of Mischief Rule [Heydon's case, 1584 (3) Co. Rep. 7a], it must be held that prior to the amendment of the definition of "Workman" the category of Workman to which Ram Lal belonged did not come within the purview of the provisions of the said Act."

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10. As would be seen from the above judgment of the Hon'ble Division Bench where the Osmania University, Hyderabad had engaged services of a contractor for white washing and painting the walls of the University and a worker employed by the contractor while white washing the walls had fallen and died and the objection raised was that whitewashing the walls of the University would not be an activity which could be construed as an activity for the purposes of trade and Business of the University. Giving an extended meaning to the word "Business" employed in the said Section 12, the Hon'ble Division Bench took a view that the restricted meaning given to the said expression would defeat the very raison d'être of section 12 of the Act.

11. The said interpretation given by the Division Bench also finds support from the amendment brought by the Parliament in the definition of Section 2(1)(n) of the Act omitting the words "Casual workman" and a Workman, who is employed other than for the purposes of employer's trade or Business. Reverting back to the facts of the present case, here also the deceased workman was employed by the contractor and although for carrying out repair job it might not be the principal activity of the Appellant but yet the Appellant cannot escape its liability



keeping in view the object of the said beneficial piece of legislation.

12. For the expeditious grant of compensation in the event of such accidents taking place in favour of the victim's dependent members, this act was enacted and a hyper-technical interpretation of the statute would not only defeat the purpose of the said Act but would be adding insult to injury."

16. In Brijesh Kumar Verma (Supra), another Co-ordinate Bench of this Court, on the strength of law laid down in Govind Goenka (Supra), observed as under:-

"37. In Govind Goenka v. Dayawati (supra), this Court examined the effect of Workmen's Compensation (Amendment) Act, 2000 and held that, after the amendment, the workman whose employment is of casual nature and who is employed otherwise than for the purpose of employer's trade or business, would also be covered within the definition of "workman"...

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47. Interplay of Section 12 and Section 2(1)(dd) of the Employees Compensation Act. (Earlier Section 2(1)(n) of Workmen's Compensation Act)

The effect of the omission of words "other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business" in the definition of workman in Section 2(1)(n) by the amendment in 2000 is that a person whose employment is of a casual nature and is employed other than for the purposes of the employer's trade or business comes within the meaning of "employee" as defined in Section 2(1)(dd) of the Employees Compensation Act. Although the words 'trade' or 'business' remain in Section 12 of the Employees Compensation Act, applying the rules of 'purposive interpretation', 'superior purpose', and 'felt necessity' this Court is of the view that the



words ‘trade’ or ‘business’ in the definition of “employee” in Section 2(1)(dd) were omitted to grant all the benefits of the Act to casual employees and employees employed other than for the purposes of employer's trade or business as held in Govind Goenka (supra).”

It is noteworthy that though an appeal was preferred before the Supreme Court against the aforesaid decision, the final order/judgment was not interfered with on merits.

17. Keeping in view the aforesaid, this Court is of the considered opinion that the learned Commissioner rightly held employer-employee relationship to have been established between the parties and awarded compensation. Accordingly, the present appeal is dismissed, alongwith the miscellaneous application, with directions to the concerned Commissioner to release the compensation amount to the claimant forthwith, if not already done.

18. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 07, 2022

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