



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

FAO 548/2016 and CM APPLs. 37377/2021, 43984/2016

Reserved on : 11.05.2022

Date of Decision : 06.06.2022

IN THE MATTER OF:

MAHA LAXMI HOSIERY

..... Appellant

Through: Mr. Kaushal Yadav and Mr. Manish
Bansal, Advocates.

versus

GOVIND SINGH & ANR

..... Respondents

Through: Mr. Hari Kishan and Mr. H.S. Kohli,
Advocates for respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The appellant has preferred the present appeal under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter, referred to as the '*Act*') seeking setting aside of the order/judgment dated 15.09.2016 passed by the learned Commissioner, Employee Compensation, North District, Delhi in WCD/106/NW/06/2076-78.

2. Brief facts, as borne out from the case records, are that respondent No.1/*Govind Singh* (hereinafter, referred to as '*the workman*') had filed a claim application on 12.06.2005 seeking compensation under the Act for



injury suffered by him during the course of his employment with the firms namely, *M/s Sanjeev Hosiery* and *M/s Maha Laxmi Hosiery*. It was claimed that he was working as a Machine Man since January, 2003/November, 2005 and his last drawn salary was Rs.8,000/- per month.

The accident in question had taken place on 24.03.2008, at about 03:30 pm, when the workman's foot got stuck in a shaft, on account of which he fell down and suffered injury. It was claimed that the workman at the time of the incident was about 33 years of age and had suffered disability of about 60%. It was also stated that the services of the workman were terminated on the same day i.e., the date of the incident. The learned Commissioner, while passing the impugned order allowed the claim petition of the workman and awarded him compensation of Rs.2,87,136/- alongwith interest @ 12% from 24.04.2008 till deposit.

3. The relevant extract of the impugned order reads as under: -

"7. That the workman filed disability certificate dated 17/12/2009 in which clearly mentioned that workman was disabled 62%. This certificate was received by this court on application dated 05/09/2009 and direction given by this court to medical supdt. Sanjay Gandhi Hospital dated 07/1/2009. As per disability certificate dated 17/12/09 age of the applicant is 34 years at the time of accident and the workman mentioned that his wage was Rs.8000/- at the time of accident but wage limit only Rs.4000/- for computing compensation at relevant time. Accordingly amount of compensation calculated as under :-

$$199.40 \times 2400 \times 60 / 100 = 2,87,136/-"$$



4. Mr. Kaushal Yadav, learned counsel for the appellant, while assailing the impugned order raised the following contentions:-

i) That the workman has failed to discharge the onus of proving the employer-employee relationship; in this regard, reliance was placed on the Award dated 22.03.2011 passed by the Labour Court in ID No.389/09 and the judgment of a Co-ordinate Bench of this Court in Automobile Assoc. Upper India v. P.O. Labour Court II & Anr. reported as **2006 SCC OnLine Del 303**.

ii) That the reliance on the statement of *Sh. Rakesh Sharma*, a co-workman, was misplaced as he had deposed on the directions of the workman.

iii) That the learned Commissioner ought not to have placed reliance on the Inspectors' reports dated 09.06.2008 and 03.11.2008, as the same were not proved on record by the scribe of the reports but rather by the workman himself.

5. Mr. Hari Kishan, learned counsel for respondent No.1, on the other hand, supported the impugned order/judgment by submitting that the workman had duly proved the employer-employee relationship on the basis of Inspectors' reports and statement of a co-workman. He further submitted that in the proceedings before the Labour Court, the workman was unable to place on record material in support of his case/lead evidence, and the issues came to be decided by the learned Presiding Officer in absence of cogent material. It was also submitted that the procedure before the Employee Compensation Commissioner is summary in nature and thus rules of evidence are not to be strictly followed. In support of his submissions,



reliance was placed by the learned counsel on the decision of the Gujarat High Court in Koli Mansukh Rana v. Patel Natha Ramji reported as **1990 SCC OnLine Guj 164**.

6. I have heard the learned counsels for the parties and perused the material placed on record as well as the learned Commissioner's Records.

7. A perusal of the case records would show that prior to approaching the learned Employee Compensation Commissioner, the workman had also raised an industrial dispute regarding his termination by the management of firm(s) in question. The same was decided vide Award dated 22.03.2011 passed by Labour Court No.IX, Karkardooma Courts, Delhi, whereby the workman's claim was dismissed. The issue as to whether employer-employee relationship existed between the appellant and the workman was framed in course of the proceedings and decided against the workman, considering that he neither deposed himself nor led evidence in support of his case.

8. Before the learned Commissioner, the workman's case was that on 24.03.2008, when he was working on his machine, the Manager orally directed him to look after the machine of another workman. At that time, his foot got stuck in a shaft resulting in fall and consequent injuries. He remained in Trauma Centre of Lok Nayak Hospital from 24.03.2008 to 28.03.2008. In this regard, he exhibited the medical records as Ex. WW-1/5 to Ex. WW-1/7. He further deposed that on 10.04.2008, he had given a complaint to P.S. Saraswati Vihar through Union, copy of which was exhibited as Ex. WW-1/8. The disability certificate from *Sanjay Gandhi Memorial Hospital, Mangol Puri* was exhibited as Ex. WW-1/15. The



workman also exhibited Labour Inspector Report, Factory Inspector Report and Report of Deputy Director, ESI as Exhibits WW-1/1, 1/3 and 1/4 respectively.

In his cross-examination, he admitted that he had no documents available in support of his claim that he was employed with the appellant for salary @ Rs.8,000/- per month since November, 2005 or any other dates. He denied that exhibits Ex. WW-1/1 to Ex. WW-1/3 were forged. The workman also examined his co-worker/*Rakesh Sharma* in support of his case, who stated that the workman was working with him in the aforesaid firm(s) and suffered the injury during the course of his employment.

9. Insofar as the disability certificate of the workman is concerned, it is noted that the disability was assessed @ 62% vide certificate No.2781 issued by *Sanjay Gandhi Memorial Hospital*. An application was moved by the appellant in the year 2015 seeking re-assessment of disability of the workman, but the same was dismissed by the learned Commissioner considering *inter-alia* that the appellant had not raised any dispute regarding assessment of disability between 2009 and 2015.

During the course of submissions in the present proceedings, the appellant has not raised any dispute regarding disability certificate of the workman, except making a bald averment in the written submissions that the certificate was not proved as per law. Any dispute regarding the amount of compensation awarded to the workman has not been raised either.

10. It is noted that in the proceedings before the learned Commissioner, the workman had filed his evidence by way of affidavit and claimed to be



employed with the management of *M/s Sanjeev Hosiery* and *M/s Maha Laxmi Hosiery*, stated to be run from the same address i.e., WZ 35, *Shakurpur Village, Kumaharo Wali Gali, New Delhi – 110034*. He further claimed - (i) that the firms in question were not registered and were being operated by the proprietor *Mr. Sanjeev Ahuja* and his brother, (ii) that during the tenure of his service, the establishment had not provided him with any legal facilities like appointment letter, attendance card, I-card, leave book etc., and (iii) that he was employed by the management as a Machine Man at the monthly salary of Rs.8,000/-.

11. In response, a common written statement was filed on behalf of both the firms, wherein it was stated that *M/s Sanjeev Hosiery* was not in existence and only *M/s Maha Laxmi Hosiery* existed at the given address, of which *Mr. Sanjeev* was the proprietor. It was denied that the workman was employed with *M/s Maha Laxmi Hosiery* at any point of time.

12. The witness *Rakesh Sharma* appeared and tendered his evidence by way of affidavit, wherein he stated that he was employed with the firms from 2006 till 31.05.2008 as a machine man on a salary of Rs.8,000/- per month. Both the firms were being run from the same premises by two brothers, namely *Mr. Sanjeev Ahuja* and *Mr. Mukesh Ahuja*, and were not registered. The manager(s) used to give oral instructions to the workmen and had kept them deprived of facilities/documents like appointment letter, Identity Card, attendance card, etc. The injured workman was employed in the same establishment since 2005 and on 24.03.2008, he suffered injuries when his foot got stuck in the shaft. When an Inspector visited the premises with respect to release of wages to the workman, the proprietor(s) admitted



that wages remained to be paid to the workman and assured that the remaining wages would be released as and when he would come. The management had tried to settle with the workman through the witness but the same could not be worked out, and as a result, the management terminated the services of the witness as well.

13. It is borne out from the record that after the incident, a report dated 09.06.2008 was forwarded by the Labour Inspector, District North West to the office of Commissioner, District North West, GNCTD, Delhi. In the said report, it was stated that on a receipt of a complaint and order of the office, the Inspector visited the establishment on 15.04.2008, where he met manager-*Sanjeev Ahuja* who confirmed that the workman had suffered injury on account of a fall. It was further stated that as per the manager, the workman could collect his remaining salary if he so desired. It was also stated that the owner admitted having incurred Rs.5000/- towards expenses in the treatment of the workman. The report also mentioned that the management failed to show any kind of record, for which purpose they were asked to visit the office on 21.04.2008 alongwith the attendance records. However, the management neither appeared nor sent any record. The report was exhibited as Ex. WW-1/1 by the workman.

14. The second report dated 03.11.2008 on similar lines was exhibited as Ex. WW-1/2, wherein it was stated that the establishment was visited by the concerned Labour Inspector on 26.09.2008 and during the enquiry from the manager-*Sanjeev Ahuja*, it was told that he had incurred expenses amounting to Rs.20,000/- for the treatment of the workman. As the manager(s) had not shown any records pertaining to the workman, they were asked to report to



the office on 29.09.2008 and 13.10.2008. However, again, no record was shown by the management.

15. Another report dated 04.07.2008 prepared by Inspector of Factories, Govt. of NCT of Delhi (Labour Deptt.) addressed to Secretary, Delhi General Majdoor Morcha was exhibited as Ex. WW-1/3, wherein it was stated that the concerned Inspector had carried out the inspection of the establishment on 02.07.2008 and the establishment was neither found registered nor registrable under the Factories Act.

16. A further report dated 15.12.2009 from Dy. Director, Employees State Insurance Corporation addressed to Chairman, Delhi General Majdoor Morcha was exhibited as Ex. WW-1/4, wherein it was stated that in pursuance to the receipt of a letter dated 05.03.2009 the establishment was visited by the concerned Inspector and no firm in the name of *M/s Maha Laxmi Hosiery* or *M/s Sanjeev Hosiery* was found operating. Rather, a firm in the name of *M/s Bhagwati Hosiery* was found to be operating, wherein about 10 employees were found to be working.

17. The appellant had filed before the learned Commissioner copies of attendance register and payment of wage register for the relevant period, to disprove the claim of the workman that he was employed with the firm(s) in question. In this regard, reliance was placed by the appellant in the present proceedings on the decision in Automobile Assoc. Upper India (Supra). This Court, in the captioned case, had indeed held that the workman, either himself or through witnesses, can establish engagement and appointment in service by directly producing appointment letter, etc. or through circumstantial evidence such as attendance register, salary register, etc.



Be that as it may, the facts of the present case are different, inasmuch as the workman has claimed that no appointment letter, identity card, attendance card, etc. was ever given to him by the management in question. The statement of the workman to this effect is supported by that of co-workman-*Rakesh Sharma*, who was admittedly an employee of the firm(s) on the date of the accident and stated that such documents were not provided to employees by the management. It has also come on record by way of the Inspectors' reports that the firm(s) in question was not registered.

18. Keeping in view the fact that the statement of the workman is supported by co-workman-*Rakesh Sharma*, as well as reports of the (i) Labour Inspector, (ii) Inspector of Factories and (iii) Deputy Director, ESIC, this Court is of the opinion that the learned Commissioner rightly reached at the conclusion that respondent No.1/workman was working with the firm(s)/management in question at the time of accident and that the accident occurred during the course of his employment on 24.03.2008.

19. Although the learned counsel for the appellant has raised a contention that the aforesaid reports were not proved by the concerned scribe, this Court deems it apposite to refer in this regard to the decision of the Supreme Court in Om Prakash Batish v. Ranjit alias Ranbir Kaur and Others reported as (2008) 12 SCC 212, wherein it was held that in proceedings before the Commissioner under the Workmen's Compensation Act, the provisions of Code of Civil Procedure and Evidence Act are not applicable. The Commissioner can lay down his own procedures and for the purpose of arriving at the truth, rely upon such documents which are produced before it.



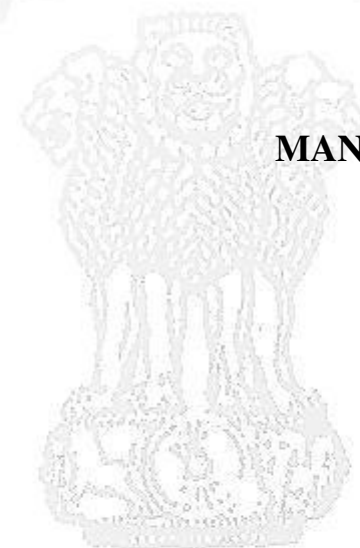
20. Having concluded that respondent No.1/workman was able to establish his case before the learned Commissioner, the appeal is dismissed. Miscellaneous applications are disposed of as infructuous. The interim directions contained in order dated 28.11.2016 passed by this Court, and the subsequent orders, are vacated. The learned Commissioner is directed to release the compensation amount in favor of the workman forthwith.

21. A copy of this judgment shall be forwarded by the Registry to the concerned Commissioner, alongwith the records of the case.

MANOJ KUMAR OHRI, J

JUNE 6, 2022

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