

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

+ **FAO 68/2023**

Date of decision: 13.04.2023

IN THE MATTER OF:

M/S SHIVI METAL

.... Appellant

Through: Mr.Sunil Kumar Ojha, Advocate

versus

AMIT KUMAR AND ANR.

.... Respondents

Through: Mr.Divyam Nandrajog, Panel
Counsel, GNCTD with
Mr.Mayank Kamra, Advocates for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. No.13232/2023 (Exemption)

1. Allowed subject to all just exceptions.
2. The application is disposed of.

**FAO 68/2023 & CM APPL. No.13230/2023 (Stay) & CM APPL.
No.13231/2023 (Delay)**

1. The appellant has preferred the present appeal under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as the 'Act') impugning the orders dated 22.09.2021 and 28.03.2022 passed by learned Commissioner, Employee's Compensation, District, North-West, Delhi in Case No.ECI/48/NW/21/617-18.

2. The primary contention raised on behalf of the appellant is that the appellant was wrongly proceeded *ex-parte* as no summons of the claim proceedings were served on him. Additionally, it was contended that the claim petition ought not to have been entertained as the claimant had already settled his claim vide Settlement Agreement dated 26.02.2021.

3. The facts, as noted in the impugned order by the Tribunal, are as under:

“2. The claimant has stated in the claim that he was employed with respondent as Power Press Man since 2020 on the last drawn wages of Rs.10,000/- per month. He worked with the respondent honestly and during his working period, he gave not a single chance to the management to raise any allegation against him. On 25.11.2020, as per direction of management, the claimant went for working on Power Press Machine on overtime as it was holiday. The machine was not working properly for many months, which was informed to the respondent. Despite assurance, he did not make it in order. On 25.11.2020 at 11:30 when he was working on the machine, his left hand crushed in machine and due to which his two fingers alongwith palm became seriously injured and he became fainted. Due to non-coverage under ESI, he was taken for treatment in D.R. Maternity & Nursing Home, C-2/3, D.R. House, Pragati Market, Ashok Vihar, Phase-II, Delhi-110052 by the respondent. On 26.02.2021, the respondent entered into a settlement and paid him total Rs. 30,000/- (Rs20,000/- vide cash & Rs.10,000/- vide cheque) on account of treatment and expenses but due injury compensation was not paid. He sent a demand notice to the respondent on 01.03.2021 even then respondent did not pay any heed to it. In the end, the claimant has prayed to direct the respondent to pay him due amount of compensation alongwith interest & penalty as per the provisions of the Act.”

4. The impugned order records that the present appellant being employer was served, however despite service, he neither appeared nor filed any written statement and resultantly, he was proceeded *ex-parte* on 22.09.2021.

The claimant led evidence in support of his case whereafter the learned Commissioner vide impugned order dated 28.03.2022 allowed the claim application. Subsequently, in terms of mandate of Section 4A(3)(b) of the Act, proceedings were held for consideration on the amount of penalty. A notice was issued to the appellant, however again he neither appeared nor filed any reply resulting in passing of the order on 18.04.2022 whereby penalty of 30% was imposed upon him.

5. Learned counsel for the appellant has disputed the factum of service of summons. It is contended that summons were served on one *Tarkesh* who has no concern with the appellant. It is further contended that at the relevant time not only the appellant was unwell, but his family members were also under medical treatment. In this regard, a reference is made to the medical document i.e. discharge summary issued by Pentamed Hospital, as per which, appellant's wife remained admitted from 07.09.2021 to 09.09.2021.

6. A perusal of the Trial Court Record would show that in the proceedings before the learned Commissioner, the claimant had duly proved the factum of service by placing the tracking report on record. As per the said Report, summons were duly served on 11.09.2021 at the registered address of the appellant at C-14/1, Second Floor, Industrial Area, Wazirpur, Delhi-110033, which were received by one *Tarkesh*. Subsequently, summons in the penalty proceedings were also sent at the same address and were delivered to *Sh.Sumit Jain* (proprietor of the appellant) on 07.04.2022. The appellant failed to appear and respond to the summons on both the occasions.

A perusal of the appeal would show that the same has been filed by the present appellant through its proprietor *Sh.Sumit Jain* using the

same address i.e. C-14/1, Second Floor, Industrial Area, Wazirpur, Delhi-110033. As such, the contention raised has no merit and the same is rejected.

Further, while explaining the delay, the submission that Sh.Sumit Jain was unwell is not supported by any medical document and the medical documents relating to other family members are of no avail to the appellant while explaining delay of 322 days.

7. Even on merits, the contention that the claimant having settled the matter could not have filed the claim petition is meritless as in the proceedings, the claimant had not only disclosed the factum of settlement but also placed the settlement on record. In fact, learned Commissioner relied upon the settlement to conclude that it established the employer-employee relationship between the parties.

8. In the considered opinion of this Court, the settlement under which only meagre amount of Rs.17,079/- p.m. was paid to the claimant would not disentitle him to seek statutory compensation under the Act. Even otherwise, while imposing penalty of only 30%, the said aspect was seemingly taken into consideration by learned Commissioner.

9. In view of the above, I find no grounds to interfere with the conclusion arrived at in the impugned order. Accordingly, the appeal is dismissed alongwith pending applications.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 13, 2023/v