

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
FAO 345/2017 & CM. APPLs. 29897 & 24742/2018

Reserved on: 17.01.2023

Pronounced on: 09.02.2023

IN THE MATTER OF:

JITENDER PALIWAL AND ORS.

..... Appellants

Through: Mr. Rajat Wadhwa, Mr. Aditya Varun,
Mr. Lakshay Luthra, Mr. Vasu Kalra and
Ms. Dhreti Bhatia, Advocates.

versus

AJAY MAURYA

..... Respondent

Through: Mr. Hari Kishan and Ms. Navita Gupta,
Advocates along with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present appeal filed under Section 30(1)(a) of the Employees' Compensation Act, 1923 (hereinafter, the '*EC Act*'), the appellants seek setting aside of order dated 29.06.2017 passed by learned Commissioner, Employees' Compensation in Claim No.WC/219/NW/2015/106, whereby the respondent's claim petition seeking injury compensation was allowed and the appellants directed to pay Rs.10,69,008/- alongwith interest @ 12% p.a. from 28.12.2012 till realization within 30 days of receipt of the order.

2. Mr. Rajat Wadhwa, learned counsel for the appellants, contended that the claim petition was filed by the respondent after three years of the incident and the learned Commissioner erred in condoning the delay of 11 months in filing thereof in absence of any sufficient explanation. He further contended that the respondent failed to establish employee-employer relationship between himself and the appellants. Lastly, while drawing attention to Schedule-2 clause (xxxi) of the EC Act, it was contended that since the respondent suffered the alleged accident while working outside a 'building', he is not covered by the definition of 'employee' in terms of Section 2(1)(dd) of the EC Act.

In support of his contentions, learned counsel placed reliance on the decision of the Supreme Court in Roop Singh Negi v. Punjab National Bank and Others reported as **(2009) 2 SCC 570** as well as the decisions of this Court in Automobile Assoc. Upper India v. P.O. Labour Court II & Anr. reported as **2006 SCC OnLine Del 303** and Vishwanth Pandey v. M/s. Madan Gopal Keshav Chandra reported as **2016 SCC OnLine Del 5336**.

3. Learned counsel for the respondent, on the other hand, supported the impugned order. It was submitted that in their written statement filed before the learned Commissioner, the appellants had admitted that they organized weekly markets in various sectors of Rohini including Sector-18, wherein the incident in question has occurred.

In support of his contentions, learned counsel placed reliance on the decision of this Court in United India Insurance Co. Ltd. v. Rajender Singh & Anr. reported as **2017 SCC OnLine Del 11340** and on the decision of the Gujarat High Court in Koli Mansukh Rana v. Patel Natha Ramji reported as **1990 SCC OnLine Guj 164**.

4. I have heard learned counsels for the parties and have also gone through the material placed on record.

5. There is no gainsaying that labour statutes such as the EC Act constitute ‘beneficial legislation’ for the welfare of employees 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 as under:-

“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, alongwith 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.”

6. As per the claim petition filed in the present case, the appellants are engaged in the business of providing electricity in weekly markets organized in and around certain sectors of Rohini, Delhi on every day of the week from 04:00 p.m. to 11:00 p.m. The respondent was engaged by them as an electrician to supply electricity and install lights for the temporary shopkeepers. On 28.11.2012, while the respondent was performing his duties under the instructions of the appellants, he had an accident and suffered a massive electric shock.

The respondent sustained serious injuries on his head and burn injuries all over his body. He was taken to *Baba Saheb Ambedkar Hospital*. From there, he was referred to *Lok Nayak Hospital* for further treatment. During treatment, he underwent surgical operations for his head, and his left and right hands had to be amputated above elbow and above wrist respectively. He also had to repeatedly visit hospitals for check-up, and at times, remained admitted for 15 days or more.

7. Before the learned Commissioner, the appellants had raised a contention that the claim was belated. In response, the respondent had submitted that he was given repeated assurances on behalf of the appellants that they would provide fair and just compensation. As such, he did not file a claim petition earlier. However, when compensation was not provided by the appellants, the respondent filed the claim petition alongwith an application seeking condonation of delay. In the opinion of this Court, learned Commissioner rightly condoned

the delay beyond two years in filing of the claim petition after noting the rival contentions.

8. Another contention raised by the appellants was that employer-employee relationship between them and the respondent was not established. In this regard, it is worthwhile to note that the respondent had filed his evidence by way of affidavit before the learned Commissioner stating that he was employed by the appellants as an electrician and was last drawing wages of Rs.6,000/- per month. In support of his claim, he had also examined one *Sh.Manohar Lal* as PW-2, who deposed that the appellants used to organize weekly market in Sector-18, Rohini and the respondent used to perform duties of an electrician being their employee. The witness further deposed that on 28.11.2012, he saw the respondent receive a massive electric shock while removing some electric fault.

9. In view of the fact that the respondent's evidence was corroborated by PW-2, reliance placed by the appellants on the decision in Automobile Assoc. Upper India (Supra) is misplaced. Further, it is apparent that in his cross-examination, respondent No.2 admitted to supplying/regulating electricity in the weekly market in Sector-18, Rohini on Wednesdays. Judicial note is taken of the fact that on 28.11.2012, i.e. the date of the accident, was a Wednesday. Considering the foregoing, the second contention of the appellants does not weigh with this Court.

Besides, the question whether or not the respondent was an 'employee' of the appellants is a question of fact, which need not be gone into at this stage. In this regard, it is apposite to refer to the following observation made by the Supreme Court in North East Karnataka Road Transport Corporation v. Sujatha reported as **(2019) 11 SCC 514:-**

"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 LRs 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.”

10. No ground having been made out to interfere with the impugned order, the appeal is dismissed. Interim order dated 21.08.2017 stands vacated. Let the amount deposited by the appellants be released to the respondent forthwith.

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

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 09, 2023/v